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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION

REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION

Sixteenth periodic reports of States parties due in 2000

Addendum

COSTA RICA*

[13 March 2001]

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* This document contains the sixteenth periodic reports due ~~on 4 January 2000. For the fif~~teenth periodic reports of Costa Rica and the summary records of the meetings at which the Committee considered those reports, see documents CERD/C/338/Add.4 and CERD/C/SR.1321-1322.

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INTRODUCTION

1. Costa Rica, as a State party to the Convention on the Elimination of All Forms of Racial Discrimination, submits for consideration by the Committee its sixteenth periodic report covering measures adopted during the period 1999-2000, in order to comply with its commitments under article 9 of the Convention.

I. GENERAL INFORMATION

A. Legal framework

1. Constitution

2. As has been indicated in previous reports, Costa Rica possesses a wide range of legislation guaranteeing to all its inhabitants every form of equality, regardless of their religion, sex, race, language, opinions, ethnic origin or social group. The Constitution of the Republic of Costa Rica, in force since 1949, reflects the spirit of the Convention in its article 33, which states that "all persons are equal before the law and no discrimination whatsoever may be practised contrary to human dignity"[1]. (Constitutional provision amended by Act n° 7880 of 27 May 1999, published in the official journal La Gaceta No 118 of 18 June 1999, which replaced the word "men" by the word "persons".)

3. The scope of article 33, as defined by constitutional jurisprudence, "does not prevent differential treatment, only such treatment as is irrational or arbitrary; that is to say that it is constitutionally possible to recognise differences between persons or groups of persons in order to apply distinct legal consequences to each, pursuant to the principle that allows equal treatment of what is equal and unequal treatment of what is unequal".[2]

4. To guarantee the implementation of their rights the Constitution provides in article 48 that "every person has the right to the recourse of habeas corpus and amparo to re-establish the enjoyment of rights conferred by this Constitution, as well as those of fundamental character established in international instruments concerning human rights applicable in the Republic".

5. For years it was the task of the Supreme Court of Justice, as the highest court of the judiciary, to ensure the constitutionality of the law. The adoption of Act n° 7128 of 15 June 1989, entitled "Constitutional Jurisdiction Act", radically reformed the treatment of Costa Rican constitutional law by creating a new court specializing in a new concept of interpretation that concerned itself with values, principles and ethical content over and above the letter of the law.

6. In article 2 defining the court's competence the Act states that it can apply not only the rights enshrined in the Constitution but also "those recognised under international law in force in Costa Rica".

7. The Constitutional Jurisdiction Act, by creating a specialized jurisdiction, modified the system of constitutional justice in force until then, thereby producing the greatest change in the legal order of the

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[1] Jorge Cordoba Ortega et al., Constitucion Politica de la Republica de Costa Rica - Concordada y anotada con resoluciones de la Sala Constitucional (Political Constitution of the Republic of Costa Rica - harmonized and annotated with resolutions of the Constitutional Court), ed. Prodel, first edition, San Jose, Costa Rica, 1996, p.165.

[2] Constitutional Court votes 829, 830, 831 and 832 of 1998.

country over the last 20 years, a change that has been described as "the real revolution in the legal world".[3]

2. International treaties

8. Article 7 of the Constitution determines the hierarchy of legal instruments, providing that "Public treaties, international agreements and concordats duly approved by the Legislative Assembly shall have a higher authority than the laws from their promulgation or from the day that they designate".

9. In accordance with the provisions of the Constitution, international treaties require legislative approval to become part of the law of the land; however, on the basis of a consultative opinion contained in Judgement n° 6624-94, Costa Rica's supreme constitutional court established that the criteria of the Vienna Convention on the Law of Treaties – legislative approval of which had been vetoed by the executive – could be applied, "because [that Convention] constitutes the codification of the customary rules of international law, rules that are binding – ius cogens – and on which there is universal consensus".[4]

10. In the field of human rights linked to discrimination the country has ratified the international instruments listed below.

11. At the universal level, Costa Rica has signed the Universal Declaration of Human Rights, adopted and proclaimed by the United Nations General Assembly in its resolution 217 A (III) of 10 December 1948.

12. Other international instruments signed and ratified by Costa Rica by Act n° 4229 are the International Covenants on human rights, adopted by the United Nations General Assembly in resolution 2200 A (XXI) of 16 December 1966, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the International Covenant on Civil and Political Rights, which were ratified on 11 December 1968 and published in La Gaceta n° 288 of 17 December 1968. In addition, by Act n° 7351 of 11 November 1993, Costa Rica ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, signed in New York on 4 February 1985.

13. The country has also ratified the following instruments that protect human dignity: the Convention on the Prevention and Punishment of the Crime of Genocide, ratified by Act n° 1205 of 4 December 1950, published in La Gaceta n° 226 of 7 October 1950; the Convention on the Elimination of All Forms of Discrimination against Women, adopted by the United Nations on 18 December 1979, ratified by Act n° 6968 of 2 October 1984, published in La Gaceta n° 8 of 11 January 1985; and the Convention on the Rights of the Child, ratified by Act n° 7184 of 12 July 1990, published in La Gaceta n° 149 of 9 August 1990.

14. The International Convention on the Elimination of All Forms of Racial Discrimination was adopted by Act Nn° 3844 of 5 January 1967, published in La Gaceta n° 5 of 7 January 1967; by Act n° 3170 of 12 August 1963, published in La Gaceta n° 187 of 21 August 1963, Costa Rica's accession to the Convention against Discrimination in Education, signed in Paris on 14 December 1960, was approved; by Act n° 4463 of 10 November 1969, published in La Gaceta n° 259 of 14 November 1969,

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[3] Gustavo Ribera Sibaja, Ley de Jurisdiccion Constitucional y creacion de la Sala Constitucional (The Constitutional Jurisdiction Act and the creation of the Constitutional Court), ed. Editec, "Laws" collection 29, San Jose, Costa Rica, 1997, p.5.

[4] Constitution, art.7.

Costa Rica adopted the Protocol Instituting a Conciliation and Good Offices Commission to be responsible for seeking a settlement of any disputes which might arise out of the Convention against Discrimination in Education; and finally, by Act n° 7041 of 8 July 1986, published in La Gaceta n° 148 of 7 July 1986, Costa Rica adopted the International Convention on the Suppression and Punishment of the Crime of Apartheid.

15. Where regional instruments are concerned, Costa Rica signed the American Convention on Human Rights, known as the Pact of San José, Costa Rica, on the day of its opening for signature, 22 November 1969. That instrument was approved by the Legislative Assembly of the Republic by Act n° 4534 of 23 February 1970, published in La Gaceta n° 62 of 14 March 1970, and ratified on 8 April 1970. It was deposited on 8 April 1970.

16. That instrument enshrines in article 1 the obligation to respect the rights and freedoms recognised in it and to guarantee their free and full enjoyment by all persons within its jurisdiction, without any discrimination for reasons of race, colour, sex or any other attribute.[5]

17. Likewise, by Decree n° 7060-RE, published in La Gaceta n° 114 of 16 June 1977, Costa Rica declared its unconditional recognition of the competence of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. That decree was submitted to the General Secretariat of the Organization of American States on 2 July 1980.

18. The scope of international legal instruments on human rights within the legal order has been defined by Judgements 3435-92, 5759-93 and 2323-95 of the Constitutional Court, which has decreed in particular in the last-named judgement that:

> "Where international human rights instruments in force in the country are concerned, the provisions of article 7 of the Constitution do not apply, since article 48 of the Constitution contains a special provision relating to human rights giving them legal force on a level with that of the Constitution. Indeed, as has been recognised in the jurisprudence of the Constitutional Court, human rights instruments in force in Costa Rica not only have similar status to the Constitution but also, in so far as they grant greater rights or guarantees to persons, take precedence over the Constitution."

19. What is striking about these legal pronouncements is that they admit features of the naturalistic conception of the law, since they establish that international instruments, even when they are not yet binding within the State, can be invoked as part of the Costa Rican legal order since they are norms belonging to the sphere of good faith and universal co-existence among States.

20. This legal hierarchy of treaties has three basic legal consequences:

i) From the moment of entry into force of the Convention, there will be automatic derogation from any law or practice opposed to it;

ii) Any rule or practical measure contrary to the provisions of the Convention that is adopted subsequently will be null and void, even if adopted by the legislature and having the status of law;

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[5] "Pacto de San Jose y reeleccion" (The Pact of San Jose and re-election), editorial by Fernando Guier in the newspaper La Nacion, Thursday, 20 July 2000, Opinion section, p.15 A.

iii) Any judicial or administrative recourses available in the national legal system may be resorted to to remedy any violation of the provisions of this international instrument. In this context it should be emphasised that one may bring an action for unconstitutionality against any rule or measure running counter to the provisions of the Convention. Furthermore, it is possible to file an application for amparo in a specialized chamber of the Supreme Court to halt and remedy any violation of the provisions of this international instrument.

3. Criminal Code

21. The Criminal Code, in article 371, sets forth rules concerning racial discrimination to the effect that:

> "Any person, manager or director of an official or private institution or administrator of an industrial or commercial establishment who applies any prejudicial discriminatory measure based on considerations of race, sex, age, religion, marital status, political opinion, social origin or economic situation shall be liable to 20 to 60 days' fine.
>
> In the event of a repeat offence, the judge may, in addition and as an accessory penalty, suspend a public official from his duties or post for a period of no less than 15 and no more than 60 days".

22. However, it should be made clear that racial discrimination is not classified as a crime but as a violation punished by several days' fine, which means that the national norms are not yet in conformity with the international regulations or those on genocide, punishment for which runs to 25 years.

23. Although there is a manifest deficiency in the rules here, the new draft criminal code makes the same mistake and also provides for a penalty of several days' fine, stating that:

> "Anyone who applies, provides or carries out discriminatory measures for reasons of race, nationality, gender, age, political, religious or sexual preference, social position, economic situation or marital status shall be liable to 30 to 75 days' fine.
>
> If the person responsible is a civil servant, the applicable penalty of disbarment from office may also be imposed for a period of from six months to three years. Furthermore, the judge may in other cases impose the applicable penalty of disbarment for a period of from 15 to 60 days."

24. While it is true that penalizing certain conduct is not the most effective way of eliminating discrimination, it is none the less true that consideration is still being given to a measure of serious and exemplary punishment for disturbing the status quo and offending human dignity.

25. Consonant with the article in question, articles 372, 272 and 274 of the same legal instrument, which govern crimes of an international nature, unlawful association and the defence of crime are intimately linked.

26. Article 372 of the Criminal Code reads as follows:

> "A penalty of 10 to 15 years' imprisonment shall be imposed on anyone heading or participating in international organizations devoted to trafficking in slaves, women, children or narcotic drugs or committing acts of terrorism or violating provisions of treaties signed by Costa Rica to protect human rights."

27. This article has been the subject of occasional treatment in national jurisprudence where specific cases were concerned and, according to the records of the Office of the Ombudsman, "there has been no application of this article in cases of racial discrimination".

28. In the case of national associations promoting acts of racial discrimination, it would be article 272 on unlawful association that would apply: "Anyone who takes part in an association of two or more persons in order to commit crimes shall be liable to from one to six years' imprisonment, simply for being a member of that association".

29. Finally, the defence of discriminatory acts is governed by article 274 of the Criminal Code, which states: "Anyone who publicly speaks in support of a crime or a person convicted of a crime shall be liable to one month to one year's imprisonment or 10 to 60 days' fine". However, rarely has this article been applied to a real case in national jurisprudence and no instance is known of its application in cases of racial discrimination.

30. Sponsoring such criminal acts, participating in or inciting to them are offences regulated and penalized in accordance with the general principles of criminal law. It is also understood that if the discriminatory act constitutes another offence also classified in the law, it is possible to punish that act under that other classification.

31. Furthermore, article 385 of the Criminal Code penalizes by 10 to 50 days' fine "anyone who displays in a public place, has printed in the press or knowingly has circulated a written text stirring up hatred against persons or institutions". However, this article, which defines an offence, has repeatedly been shown in constitutional case-law to lack any means of exacting the penalty, since there is no imprisonment for debt, except for non-payment of maintenance, and the fine cannot be converted into imprisonment.

32. It should also be pointed out that our country lacks any laws governing discrimination or incitement to hatred using computerized means or new technologies like the Internet.

4. Specific regulations concerning discrimination

33. The General Act on HIV-AIDS provides in article 48 for a fine and disbarment from office for anyone practising discrimination against a person suffering from that disease. The text is as follows:

> "Discrimination: anyone who applies, provides or carries out discriminatory measures for reasons of race, nationality, gender, age, political, religious or sexual preference, social position, economic situation, marital status or any form of ill-health or disease shall be punished by 20 to 60 days' fine. The judge may, in addition, impose the applicable penalty of disbarment for 15 to 60 days."

34. The Act on the Promotion of the Social Equality of Women, n° 7142 of March 1990, provides in article 2 that "the State authorities and institutions are bound to ensure that women suffer no discrimination by reason of their gender and that they enjoy equal rights with men, whatever their marital status, in the political, economic, social and cultural sphere".

35. Act n° 7476, entitled Act against Sexual Harassment in Employment and Education, adopted in February 1995, states in article 1 that

> "This Act is based on the constitutional principles of respect for freedom and human life, the right to work and the principle of equality before the law, which compel the State to condemn

> discrimination for reasons of sex and to establish policies to eliminate discrimination against women".

36. Lastly, another law of particular importance in relation to discrimination is Act n° 7711 of 1997, which was described in our previous report and deals with the elimination of racial discrimination in educational programmes and the media.

37. The State of Costa Rica wishes to point out that the comments made by members of the Committee in their earlier evaluation of our legal reforms were communicated to the Legislative Assembly to enable it to consider initiatives for the revision of the express legal definition of discrimination by reason of national or ethnic origin and racial discrimination by private groups or associations and for reviewing the fines prescribed.

5. Regulations favouring indigenous people

38. Where the Constitution is concerned, one of the most important reforms was that adopted on 27 May 1999 by Act n° 7878, which added article 76 establishing Spanish as the official language and referring to the national indigenous languages. The Article reads as follows:

> "Article 76. Spanish is the official language of the nation. Nevertheless, the State shall ensure that the national indigenous languages are preserved and cultivated."

39. In regard to this constitutional revision, the Office of the Ombudsman has said that "it is important to recognise the existence of indigenous languages, but Costa Rica does not yet give them the rank of official language, as has been done in other countries of Latin America".[6]

40. With regard to laws governing the rights of indigenous peoples, Costa Rica has incorporated into its legislation Convention n° 169 of the International Labour Organization (ILO) concerning Indigenous and Tribal Peoples in Independent Countries, which it ratified by Act n° 7316 of 16 October 1992.

41. In a recent decision (vote n° 06229-99 of 11 August 1999), the Constitutional Court decreed that ILO Convention n° 169 ranked equal with the Constitution. The importance of that statement lies in the fact that the particular provisions concerning indigenous affairs contained therein tend towards guaranteeing for indigenous people the chance to define their own development independently and compel the State to respect their traditions and customs. Furthermore, since this is an international convention, failure to comply with it becomes a violation of the constitutional order, which is the reason why it is the Constitutional Court which deals with these cases.[7]

42. The country has also assumed international commitments in connection with the Plan of Action of the Second Summit of the Americas, held on 18 and 19 April 1998 in the city of Santiago, Chile, on which occasion Governments promised to promote greater participation by the indigenous population in society, by providing appropriate access to education, health care and vocational training and, in general, improving their living standards.

43. On the subject of compliance with ILO Convention n° 169 and its effectiveness, the annual report of the Office of the Ombudsman on its work for the year 2000 indicates that some situations do arise where there is evidence of discriminatory conduct, among them "a lack of translators of indigenous languages; the discriminatory or intolerant attitude of some public officials when providing services or

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[6] Office of the Ombudsman, Communication PE-407-2000, 30 October 2000, p.3.

[7] Decision of the Constitutional Court, vote no.06229-99, 11 August 1999.

attending to complaints; an absence of information for indigenous people about their rights, procedures and formalities; difficulties in notifying people of legislation because of geographical conditions; a failure to adapt the provision of services to the real needs of indigenous communities (e.g. public opening times); an ignorance of indigenous peoples' world view; the failure of the institutional authorities to visit indigenous communities in order to understand their background and adapt their own action to the cultural environment; a general lack of communication between the institutional authorities and indigenous people; and an absence of specific institutional plans for that population".[8]

44. By Act n° 7549 of 22 September 1995, published in La Gaceta n° 204 of 27 October 1995, Costa Rica also approved the Convention setting up the Indigenous Peoples' Development Fund for Latin America and the Caribbean.

45. The most important legal instrument in this field is the Indigenous Act, n° 6172 of 29 November 1977, published in La Gaceta n° 240 of 20 December 1977. This law covers such aspects as who are indigenous people, the legal character of indigenous communities, ownership of reservations and their inclusion in the Public Register, the organizational structure of indigenous communities, formalities for expropriation and compensation, means to prevent invasions of lands, expropriation funds, the internal administration of commercial premises, the exploitation of natural resources and the priority nature of the Act.

46. The importance of the Indigenous Act is that, in its time, it represented a milestone in the history of the Latin American indigenous movement because it constituted an advanced set of rules protecting indigenous rights. The Act recognised not only the right of peoples to their lands (article 5) but also their identity (article 1), their own organization (article 4) and a series of other rights not expressly recognised in the rest of our national legislation.

47. Although we have this specific legal instrument, it is not consistent with ILO Convention n° 169 and in practical terms its precepts are not effectively applicable: problems remain with regard to title to the land and its usurpation by non-indigenous individuals or major consortia, with the fact that indigenous culture is not fully recognised as part of the reality of a system and for many years erroneous policies and methods of integration have been applied to ensure political and social control over those peoples.[9]

48. In addition to these problems there are the difficulties indigenous people continue to have in obtaining public funds. By an interim provision to Act n° 5251 of July 1973 and its amendments – which created the National Indigenous Affairs Commission (CONAI) as an institutional counterpart for indigenous affairs – it was decided that "the national banking system and other State institutions, together with the National Indigenous Affairs Commission, shall apply a special system of regulations to ensure that members of aboriginal communities can obtain funds for the appropriate exploitation of their lands, as indicated in this interim provision".

49. However, although a convention has been signed setting up a fund, to date the inhabitants of the indigenous communities still lack the indispensable minimum to establish their credit-worthiness and thus the law remains without effect.

50. In its previous report Costa Rica described the progress in the Congress of the Republic of the draft Act for the Autonomous Development of the Indigenous Peoples, whose purpose was to give full effect to the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination and ILO Convention n° 169 on indigenous and tribal peoples in independent countries.

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[8] Office of the Ombudsman, Annual report for the year 2000, p.272.

[9] Rubén Chacon Castro, Legislacion Indigena Costarricense (Costa Rican indigenous legislation), 1994.

51. Unfortunately, that draft, which aimed at recognition of the full autonomy of the indigenous peoples and their right to claim their own cultures, in particular their right to administer their territories, to exercise full rights over them, to prepare their own development plan and to take the decisions they felt appropriate to achieve development in the light of their own traditions and customs, was shelved in Congress because of a technicality.

52. The draft, which in April 1998 had received the assent of the Standing Committee on Social Affairs of the Legislative Assembly and in June of the same year a favourable verdict from the Constitutional Court, pursuant to its task of providing optional advice on constitutionality, was shelved in accordance with the amendment to article 119 of the rules of procedure of the Legislative Assembly, which stated that all drafts tabled more than four years previously should be shelved, regardless of their status in the plenary.

B. Inter-Ministerial Commission

53. In October 2000, with the agreement of the Council of Government, the President of the Republic formed an inter-ministerial commission composed of high-ranking officials from the Ministries of Justice and Foreign Affairs and the Executive President of the National Institute for Women, with the rank of Minister, to study and prepare, within a period of four months, an inter-institutional State policy to eliminate all forms of discrimination in our country.

54. With regard to actions to be undertaken, a time has been set aside for consultations with all the country's ethnic groups to enable them to report what limitations are placed on their access to education, culture and social and economic development.

55. Further to the question of indigenous affairs, as a consequence of the indigenous peoples' march held on 12 October 1999, the President of the Republic undertook a series of commitments, among them the formation of a High-Level Inter-Institutional Commission, comprising the Ministries of Agriculture, Health, Housing, Education, Security, Labour, Culture and the Environment and the executive heads of the Institute for Agrarian Development and the National Children's Trust, co-ordinated by the Ministry of the Presidency, whose purpose is to deal with the problems of the country's indigenous population.

56. This High-Level Commission comprises three sub-commissions which work on three basic aspects: a) the legal and institutional situation, working with and giving legal direction to CONAI and preparing the General Assembly sessions; b) economic and social development; and c) ownership, exploitation and control of land in the reservations.

57. One result of the work of the sub-commission on economic and social development was the official presentation to the President of the Republic in October 2000 of a broad diagnosis of each of the 22 indigenous reservations in the country, setting out the institutional strengths and weaknesses of the care given each of the communities located in the indigenous territories.

58. A positive aspect of the work of the Commission that should be highlighted was its preparation of Costa Rica's First National Plan for the Development of Indigenous Peoples, scheduled to become part of the National Development Plan of the Government of the Republic. This political decision implies that for the first time in the history of Costa Rica the State is taking a firm step forward towards supporting a policy to benefit indigenous peoples.

59. A second innovative aspect was the organization of workshops about needs, which were endorsed by all the integral development associations and by organizations and individuals from the different communities. These events were democratic; participation was encouraged and the exclusion of any

person or group that wished to take part was neither tolerated nor permitted. That was the first time that a process of prioritization of the needs of all the indigenous territories had taken place in Costa Rica.

60. Those workshops made it possible to confirm the priority needs of the indigenous communities themselves, to pinpoint the areas of State action or inaction in the indigenous territories, to provide the development associations in each territory with an instrument that could serve as a basis for objective work, to inform the members of each community of institutional actions taken by CONAI and the development associations, thus providing an objective basis for control, and to enable CONAI to redefine its institutional role.

61. In addition, the workshops allowed the Government to gauge the need for its resources and to see that extraordinary resources would be required for medium and long-term programmes. The workshops became the real, objective foundation for the First National Plan for the Development of Costa Rican Indigenous Peoples and the way they were conducted resulted in their "product" being "bankable": in other words, they have supplied a basic document for impartial resource management vis-à-vis international financial organizations and social welfare agencies, whether national or foreign.

62. As part of that effort, a process has been established with the Central American Bank for Economic Integration with the aim of incorporating the document into that institution's projects and formal talks have begun to the same end with the Regional Unit for Technical Assistance (RUTA) of the World Bank.

63. To deal with the problems of migrants a government-level commission is preparing a revision of the General Act on Migration and the Status of Aliens. That Commission, set up in August 1999 and made official by decree in January 2000, had virtually completed its work at the time of writing the present report.

64. The aim of that law is to ensure greater immigration control over the thousands of foreigners who enter the country each year without papers. The new law includes the regulation of migrant labour flows and provides means of expelling illegal migrants from the country. It also imposes a limit of six months for tourists to stay in the country, regulates the hiring of foreigners, sets penalties for employers who violate the labour rights of their workers, determines penalties and controls for firms that transport undocumented persons overland and creates new labour classifications, as for example, workers who constantly cross the border and those who do so seasonally.

C. Statistical records of migrants in Costa Rica

65. The problems connected with the phenomenon of migration are complex. In response to movements of migrants in Central America and in view of the need to deal with them in an integrated manner seeking economic and social development, the Governments of North and Central America have created the Regional Conference on Migration (RCM). Its first meeting was held in 1996 in the Mexican town of Puebla and so the RCM is also known as the "Puebla Process".

66. The RCM is a mechanism for dialogue and the exchange of information to assist the development of official migration policies in each member country. At present the countries members of the Puebla Process are Belize, Canada, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama and the United States of America.

67. In order to have a co-ordinating body within RCM, at the proposal of Mexico a Virtual Secretariat (VS) was put in operation to facilitate and improve the management of the Conference. The Virtual Secretariat is an information system within a computer (server) permanently linked to the Internet and thus accessible almost anywhere in the world. The system comprises two modules: a public one with information on documents, debates or data bases, and a private one which serves as a depository of

information on the phenomenon of migration in the region and as a medium for interaction among all those involved.

68. According to statistics from the General Directorate of Migration and Aliens in Costa Rica, until 1987 the largest influx of migrants was from El Salvador; however, beginning in that year there was a massive influx of Nicaraguans, whose numbers today are the subject of much speculation: some estimate there to be between 500,000 and 700,000, though with insufficient empirical evidence.

69. The Statistics Department of the General Directorate of Migration and Aliens had on 13 June 2000 a record of a total of 127,148 legal residents, both temporary and permanent, to whom should be added those who availed themselves of the migrant amnesty and the thousands who are still in an illegal situation. Other major Central American migrant flows are from El Salvador, whose nationals in Costa Rica number 9,866, and Guatemala, there being 8,056 Guatemalans in our country.

70. In June 2000, after 16 years, a national census was conducted in the country, preliminary data from which were expected by the beginning of 2001. However, on the basis of indirect data, such as the number of children born to Nicaraguan mothers in Costa Rica, the population censuses taken in Nicaragua and estimates of the Nicaraguan population in the United States, a group of investigators have reached what they feel is a valid approximation of the size of that population in the country.[10]

71. The study puts the number of Nicaraguans at between 300,000 and 340,000, which represents between 7.8% and 8.8% of the country's total population.

72. The study concludes that the Nicaraguan immigrant population will be a crucial factor in the demographic growth of the country. According to estimates for the year 2100, if present trends continue, the population of Costa Rica could reach 11 million; if, on the other hand, immigration declined to zero over the next two decades, the total number of inhabitants would be a little more than 7 million.

73. According to the records of the National Institute of Statistics and the Census, the proportion of births to nationals to births to foreigners between 1990 and 1998 was as follows:

Births

Year	*Nationals*	*Foreigners*	*Nicaraguans*
1990	77,790	4,149	3,048
1991	76,972	4,138	-------
1992	70,096	10,068	2,980
1993	74,700	5,014	-------
1994	73,990	6,401	5,141
1995	72,829	7,477	-------
1996	70,790	8,413	7,040
1997	69,964	9,054	-------
1998	67,150	9,832	8,398

Source: National Institute of Statistics and the Census

Note: The total of Nicaraguans is in relation to the total of foreigners. State of the Nation project, "State of the Nation in Sustainable Human Development, 2000".

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[10] "Costarricenses no superan los 400 mil" (Costa Ricans do not exceed 400 thousand), investigation by the Latin American Faculty of Social Sciences (FLACSO) in La Nacion, Sunday, 5 December 1999, "El pais" section, p. 4 A.

74. To complement the foregoing table, in 1999 out of a total of 78,526 births, 9,695 were to Nicaraguan mothers, that is 12.3%. This means not only that migration is on the increase but also that migrant families are becoming more permanently settled in Costa Rica.

75. A comparison of figures on the socio-demographic characteristics of migrants from the household surveys of 1997 and 1999 shows significant changes. With regard to age structure, an increase is seen in the numbers of minors and adolescents: minors from age 0 to 11 years increased from 11.4% of all Nicaraguan immigrants in 1997 to 16.1% in 1999. The percentage of adolescents (those of 12 to 19 years) rose from 13.5% to 19%. These figures reveal greater settlement of immigrants in the national territory, with a consequent process of family reunification.[11]

76. According to estimates from the Central American Population Programme (PCP) of the University of Costa Rica, by 1999 the population of Costa Rica had reached 3,856,191 inhabitants. The total number of temporary and permanent resident aliens by continent and country on 13 June 2000 is as follows:

Country or territory	*Temporary*	*Permanent*	*Total*
Africa			
Angola	0	2	2
South Africa	3	6	9
Algeria	3	9	12
Burkina Faso	1	0	1
Bahrain	1	0	1
Dahomey	3	2	5
Botswana	1	0	1
Cape Verde	2	6	8
Cameroon	1	0	1
Chad	1	0	1
Congo	1	0	1
Cote d'Ivoire	1	0	1
Egypt	1	4	5
Eritrea	0	2	2
Etiopia	1	0	1
Gabon	1	0	1
Gambia	1	0	1
Guinea	1	0	1
Guinea Bissau	1	0	1
Kenya	4	2	6
Lesotho	1	0	1
Liberia	1	0	1
Libya	1	18	19
Madagascar	1	0	1
Malawi	1	0	1
Mali	1	0	1
Morocco	3	5	8
Mauritania	1	0	1

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[11] State of the Nation project, Estado de la Nacion en Desarrollo Humano Sostenible 2000 (State of the nation in sustainable human development), p.113.

Country or territory	***Temporary***	***Permanent***	***Total***
Mozambique	1	2	3
Namibia	1	0	1
Níger	1	0	1
Nigeria	1	5	6
Central African Republic	1	0	1
Zambia	2	2	4
Rwanda	1	0	1
Western Sahara	1	0	1
Senegal	1	4	5
Sierra Leone	1	0	1
Somalia	2	2	4
Swaziland	1	0	1
Sudan	1	2	3
United Republic of Tanzania	3	5	8
Togo	1	0	1
Tunisia	1	0	1
Uganda	2	0	2
Zaire	1	0	1
Zambia	1	0	1
Total for Africa	66	78	144
America			
Antigua and Barbuda	0	2	2
Argentina	316	1,088	1,403
Aruba	1	0	1
Bahamas	2	4	6
Barbados	1	4	5
Belice	14	21	35
Bermuda	2	0	2
Bolivia	64	289	353
Brazil	143	360	503
Canada	319	1,265	1,574
Chile	298	1,816	2,114
Colombia	1,269	3,905	5,174
Cuba	268	6,667	6,935
Netherlands Antilles	1	0	1
Dominica	3	5	8
Ecuador	187	747	934
El Salvador	1,775	8,091	9,865
United States of America	2,179	13,657	15,836
Grenada	1	0	1
Greenland	1	0	1
Guadeloupe	1	0	1
Guatemala	424	7,632	8,056
Guyana	1	31	32
French Guiana	23	0	23
Haiti	13	112	125
Honduras	371	2,545	2,916

Country or territory	*Temporary*	*Permanent*	*Total*
Malvinas	1	0	1
Jamaica	34	8,726	8,760
Martinique	1	0	1
Mexico	610	1,698	2,308
Nicaragua	15,987	111,161	127,148
Panama	605	6,232	6,837
Paraguay	6	65	71
Peru	738	2,735	3,473
Puerto Rico	2	3	5
Dominican Republic	104	921	1,025
Surinam	2	4	6
Trinidad and Tobago	17	15	32
Uruguay	57	243	300
Venezuela	208	1,096	1,304
Total for America	26,048	181,130	207,178
Asia			
Afghanistan	1	2	3
Saudi Arabia	1	3	4
Armenia	0	5	5
Burma	1	0	1
Cambodia	1	0	1
Cyprus	1	4	5
Republic of Korea	453	246	699
Democratic Republic of Korea	1	0	1
Philippines	51	45	96
Hong Kong	72	100	172
India	41	43	84
Indonesia	2	3	5
Iraq	2	6	8
Iran	91	153	244
Israel	60	134	194
Japan	193	405	598
Jordan	6	18	24
Kazakhstan	4	2	6
Kuwait	2	3	5
Laos	1	2	3
Lebanon	16	264	280
Malaysia	1	7	8
Mongolia	1	0	1
Nepal	1	3	4
Oman	1	2	3
Pakistan	1	8	9
Palestine	0	5	5
Qatar	1	0	1
Taiwán	102	4,697	4,799
People's Republic of China	1,404	5,346	6,750
Singapore	1	11	12

Country or territory	***Temporary***	***Permanent***	***Total***
Syria	1	36	37
Sri Lanka	1	0	1
Thailand	4	5	9
Turkey	4	11	15
Uzbekistan	0	2	2
Vietnam	1	2	3
Yemen	0	2	2
South Yemen	1	0	1
Total for Asia	2,524	11,575	14,099
Europe			
Germany	1,723	3,490	5,213
Albania	1	0	1
Andorra	1	0	1
Austria	33	143	1,763
Belarus	0	3	3
Belgium	50	208	258
Bulgaria	3	29	32
Czech Republic	18	68	86
Croatia	5	6	11
Denmark	25	74	99
Scotland	2	5	7
Slovakia	0	4	4
Slovenia	3	3	6
Spain	335	4,365	4,700
Finland	4	16	20
France	212	733	945
Georgia	0	5	5
Greece	4	75	79
Netherlands	177	790	967
Hungary	5	98	103
England	209	1491	700
Ireland	13	23	36
Iceland	2	0	2
Italy	447	2,423	2,870
Latvia	0	2	2
Liechtenstein	2	3	5
Luxembourg	2	8	10
Malta	1	0	1
Moldova	0	3	3
Monaco	1	0	1
Norway	26	70	96
Poland	7	65	72
Portugal	21	97	118
Romania	7	55	62
Russia	27	270	297
San Marino	1	2	3
Switzerland	236	665	903

Country or territory	***Temporary***	***Permanent***	***Total***
Sweden	42	116	158
Ukraine	2	28	30
Holy See	1	0	1
Yugoslavia	8	58	66
Total for Europe	3,658	15,494	19,152
Oceania			
Australia	13	49	62
New Zealand	8	11	19
Papua New Guinea	1	0	1
Vanuatu	1	0	1
Total for Oceania	23	60	83
Others			
Stateless	1	21	22
UNO	1	0	1
Organization of American States	1	0	1
Unclassified	0	0	1
Total	3	21	24
Total resident aliens	32,322	208,358	240,680

Source: Department of Planning, General Directorate of Migration and Aliens.

77. It should be stressed that also to be included in this register are the 656 political refugees in Costa Rica. These figures allow one to conclude that roughly 7.18% of our national population is foreign.

D. Assessment of the 1999 migrant amnesty

78. In an attempt to prevent disorganized illegal migration in Central America from causing a decline in the living standards of the immigrants, urban sprawl and the growth of areas of marginality, as well as risking strengthening international networks of illegal traffic in migrants, Costa Rica has decreed three exceptional measures in favour of migrants over the past decade, which have enabled Central American immigrants to legalize their situation, thereby rendering their presence in the country official and allowing them to assume the rights and obligations proper to their status.

79. Thus, in view of the grave human and material damage done in Central America by hurricane Mitch in November 1998, the Government of Costa Rica, by Decree n° 27457-G-RE of 24 November 1998, published in La Gaceta n° 239 of 9 December 1998 and complemented by a regulation of 26 January 1999, proclaimed an amnesty for all illegal Central American immigrants resident in the national territory before 9 November 1998, so as to offer them the opportunity to regularize their situation as migrants.

80. The most important aim of this amnesty for immigrants was to obtain an inventory of their numbers, which would, in turn, provide greater legal security for migrant workers, because once their documents were in order they could without fear have recourse to judicial or administrative bodies to claim all their rights. An a posteriori evaluation of the amnesty leads to the conclusion that the process was a most important step in the organization of immigration-related policies and actions in Costa Rica. By this measure the State was able to supersede the register of the immigrant population originating from

the rest of the region and possessing the status of temporary or permanent resident on 1 February 1999, which was the date on which applicants' documentation started to come in.[12]

81. The granting of this exceptional measure at a time of particular crisis in the region was recognised by the members of the Committee on the Elimination of Racial Discrimination in their assessment of the previous national report submitted in March 1999.

82. On that occasion the experts said:

> "The Committee notes with appreciation that, even in times of economic crisis or natural disaster, the State party has traditionally maintained a generous refugee and immigration policy. It notes with particular interest that a "migratory amnesty" is currently in force, from 1 February 1999 to 31 July 1999, allowing for the regularization of the situation of a large number of clandestine immigrants in order to ensure their enjoyment of social, economic and cultural rights, particularly in regard to work."[13]

83. The records for 2 June 2000 of the Planning Department of the General Directorate of Migration and Aliens show that the dossiers of 155,316 Central Americans had been processed and 131,998 residence permits had been granted, while 8,701 applications had been rejected. Of the permits granted, 128,541, or 97.4%, were to Nicaraguans, 18 to Belizeans, 215 to Guatemalans, 681 to Hondurans, 1,407 to Panamanians and 1,136 to Salvadoreans.

84. Since 18 August 2000, the renewal of residence permits has begun for those who applied for the migrant amnesty, a basic requirement being good conduct over the previous 12 months. On that point the policy of the Costa Rican Government has been rigorous in its determination that "all those immigrants who after having applied for the amnesty have been convicted in Costa Rican courts of law shall not only lose their resident status but also be deported".[14]

85. Geographically the office that processed the largest number of applications was that of San José with 121,152, followed by the offices in San Carlos and Liberia in the north of the country, with 6,751 and 5,278 applications respectively.

86. Studies done by FLACSO and IOM on the results of the migrant amnesty show that the age structure of the applicants is as follows: 0 to 12 years, 9.6%; 13 to 19 years, 19.8%; 20 to 40 years, 56.5%; 41 to 65 years, 11.1%; 66 years and over, 1.1%, with 2.8% not classified as to age. An analysis of these figures shows that this is a migrant population with great impact on the work force.[15]

87. The geographical observation made above also reflects a change in the social and geographical distribution of this population: using the results of the 1999 amnesty it has been determined precisely that the greatest concentration of immigrants is on the central plateau and particularly in the metropolitan

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[12] International Organization for Migration (OIM) and Latin American Faculty of Social Sciences (FLACSO), Analisis de los alcances sociales y del impacto del regimen de excepcion migratoria para los inmigrantes de origen centroamericano en Costa Rica (Analysis of the social implications and impact of the exceptional regime for Central American immigrants in Costa Rica), September 1999, p.2.

[13] Concluding observations of the Committee on the Elimination of Racial Discrimination (CERD/C/304/Add.71), 7 April 1999.

[14] "Extranjeros a renovar cédulas" (Foreigners to renew permits), La Nacion, Monday 24 July 2000, p.15

[15] IOM and FLACSO, op. cit., p.18.

area, the second highest concentration being found in the territories of the northern region, particularly Huetar Norte and Huetar Atlantica.

88. The benefits deriving from this process of amnesty have been clearly expressed in the report of the Office of the Ombudsman for the year 2000, which says:

> "The granting of exceptional treatment is a highly relevant beginning to the identification of our country as a country of reception for migrants. Although this characteristic is not recent, but deep- rooted and of long standing, it has not been incorporated as such in the formulation of national development plans, social policy or the Government's agenda, given the change in the nature of migrant flows from those of basically political origin to those that are essentially economic, such as we see today.

89. The report goes on to say:

> "Moreover, there is a clear benefit for the migrants themselves in possessing documents that show them to be regular residents of the country, because this reduces the vulnerability they suffered as undocumented aliens. The status of free resident not only confers full recognition of fundamental rights - rights that had always been theirs as human beings, but that had often been denied them because of their irregular situation - but also enhances their ability to demand respect for those rights, at the same time as they have to assume concomitant responsibilities."[16]

90. It should also be mentioned that in connection with the Decree of Migrant Amnesty several applications for amparo have been filed in the Constitutional Court, all of which have been declared void. The justification alleged for these applications was the social consequences and economic impact that the presence of groups of immigrants would have on the health, education, housing and labour services.

91. As has been said, all those applications were declared void by virtue of article 30 of the Constitutional Jurisdiction Act, which states that amparo is not admissible against laws or other legal provisions, except when they conflict with rights of individual application. In its considerations the Constitutional Court has also referred to the right of every child, regardless of its race, colour, sex, language, religion, political opinion, national, ethnic or social origin, economic situation or physical disability, to access to public education, as guaranteed by the Convention on the Rights of the Child.[17]

E. National census, 2000

92. No national census had been held in the country since 1984. Various reasons had made conducting a census impossible, which had meant that a record had to be kept of the different variables gleaned from the "household surveys" that work from a sample and select only certain localities and households.

93. Finally, after a wide-ranging process of co-ordination, the National Institute of Statistics and the Census, with the co-operation of the country's teachers, was able to conduct the national census between 26 June and 1 July 2000. That was the ninth general census of the Republic since the first was taken in 1864.

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[16] Office of the Ombudsman, Annual report 1999-2000, chap. I "Costa Rica, a receiving country for migrants", San José, Costa Rica.

[17] In this regard, see remedy of amparo, JASM v. President of the Republic and Minister of Foreign Affairs, Constitutional Court, vote no.1009-99, 5.09 p.m., 16 February 1999.

94. The campaign for the census was carried out in four basic stages: in the first the public was given an explanation of what a census was; the second stage concentrated on winning the collaboration of the population; in the third stage the badges of the teachers who were to carry out the work were explained and efforts were stepped up to answer the public's questions about the census; finally, the fourth stage, which was concluded on 8 July 2000, was aimed at thanking the people for their co-operation.

95. It is estimated that about 23,000 persons took part in this process, of whom 18,000 were teachers working as census-takers, who asked questions about the characteristics of the population of Costa Rica and their housing. One of the most innovative aspects of the census was the introduction of new questions to record data on persons with disabilities and on ethnic groups (indigenous, Chinese and Afro-Caribbean among others).

96. Thus, after 50 years, the National Institute of Statistics and the Census included in its census the question: to which culture do you belong: indigenous; Afro-Costa Rican or black; Chinese; none of the above? The inclusion of that question came to signify a great step forward in raising the profile of minority groups in the country, since for decades, despite the belief that we were complying with article 33 of the Constitution which enshrines equality, the multi-ethnic and multi-cultural diversity of the inhabitants of the national territory had been lost sight of and disregarded.

97. In the particular case of the indigenous communities, for the first time a specific questionnaire was used in their territories, in which they were asked about the culture they belonged to and their language.

98. The census-takers are estimated to have visited 950,000 households, as well as hospitals, prisons and old peoples' homes. The census was guided by various rules, as for example, that information could be given by any person over age 15 who was a member of the family group being checked and was sufficiently familiar with its characteristics.

99. An important aspect was confidentiality in the use of the information; for that reason any questions on income or other data for tax purposes were omitted. An important task for the authorities managing the census was to make the clandestine migrant population aware of the need to provide information. That information could not be divulged, even pursuant to a court order. Likewise, the questionnaire was geared to discovering where, if they were foreigners, such persons had lived five years ago and the year in which they had entered the country, but they were never asked about their migrant status.

100. The first records show that 97.5% of the total population were interviewed. The main obstacles preventing complete coverage were: a lack of up-to-date maps; the fact that the occupants were not in when some houses were visited; and the landslide that struck the population of the province of Puntarenas. The first results are expected to be tabulated in the early months of 2001, although it is estimated that an analysis of all the information will not be published before the end of that year.

101. The significance of the census, as has been indicated, is that it provides accurate knowledge of, inter alia, the number of persons belonging to minority groups, which will allow greater precision in the preparation of public policies in their favour.

F. Programmes of international co-operation

102. In December 1999, the Government submitted to the United States Agency for International Development (USAID) a request for assistance in solving social problems in the 21 cantons with the largest migrant population in the country.

103. The programme for integrating immigrants in Costa Rica and improving their living standards originally hoped that the United States Government would fund 21% of the total cost of the project, estimated at US$ 90.2 million (some 26,700 million colons).

104. These projects will be executed by the IOM and will serve to strengthen services in the four areas of greatest impact on immigration in Central America: health, employment, housing and education.

105. For the housing sector, investment of some US$ 34.2 million is planned; for employment, about US$ 19.8 million; for health, about US$ 17 million; and for education, about US$ 15.6 million. By June 2000, US$ 5 million funding had been ensured from USAID for the education programme, US$ 2.5 million for health is to be provided by the Pan-American Health Organization (PAHO) and the United States Government, and US$ 900,000 for housing will be contributed by the Government of Sweden.

106. According to information provided by the Permanent Mission of Costa Rica in Geneva, there is also a project for the analysis of the socio-economic impact of migration between Costa Rica and Nicaragua, with a budget of US$ 27,280.

107. Likewise, acting jointly, the non-governmental organizations the Costa Rican Human Rights Commission (CODEHU) and the Women's International League for Peace and Freedom (WILPF) have presented a project entitled "Migrant women, children and adolescents" to be carried out in the border region, specifically in the area of Sarapiqui, canton of Heredia. This project is still in the initial stages and as yet lacks funding.

108. The project aims to give the target population the means for enhanced enjoyment of the quality of life during their residence in the country by publicizing their rights and responsibilities, ensuring they understand them and providing legal and administrative protection and counselling on education, health and the law for those from 15 to 18 years of age and for migrant women.

109. Finally, it is important to mention that the state visit of President Miguel Angel Rodriguez to the Kingdom of Belgium in November 2000 provided a propitious occasion to explain to King Albert II of Belgium our country's need for more resources to meet the needs of Central American immigrants and Costa Ricans on low incomes. In the coming months the type of assistance that that European nation could provide in that regard will be further defined.

G. Indigenous peoples of Costa Rica

110. Formally speaking, there are eight ethnic groups or indigenous peoples in the territory of Costa Rica: Cabecares, Bribis, Ngobes, Térrabas, Borucas or Brunkas, Huetares, Malekus and Chorotegas. Each of these peoples possesses a specific cultural tradition and, although Costa Rica is considered a small country, each people has quite a distinct social and cultural make-up.

111. With the exception of the community of Altos de San Antonio, near Cuidad Neilly in the south of the country, where part of the Ngöbe people live; of the community of China Kicha near the community of Volcan de Buenos Aires in Puntarenas, where some Cabecar families settled who refused to move when their lands were seized; of some communities in the Puriscal area that are of Huetar origin; and of other communities of Guanacaste, where people live who consider themselves descendants of the Chorotegas or are considered indigenous, the indigenous peoples are to be found in territories set aside for them and known in Costa Rican legislation as "indigenous reservations", but which the Costa Rican indigenous movement and international legislation prefer to call "indigenous territories".

112. Estimates of the indigenous population according to various sources and at different dates is as follows:

Date	*Population*	*Source*
1988	24,136	CONAI
1991	23,223	Indigenous education advisers
Sin determinar	35,000	National Indigenous Committee
1998	38,250	National Indigenous Committee
1999	33,354	Field work
1999	41,687	Various secondary sources

Source: World Bank, Profile of the Indigenous Peoples of Costa Rica, Regional Technical Assistance Unit programme, May 2000.

113. A breakdown of the territorial statistics for each of the indigenous peoples is as follows:

People	*Region*	*Territory*	*Population*	*Total*	*Surface area in hectares*			
					In indigenous hands		*Totals*	*Effective*
					Per cent	*Hectares*		
Maleku	Guatuso	Maleku	890	2,993	20	598.7	3.4	0.7
Huetar	Quitirrisí	Quitirrisí	1001	963	30	289.0	1.0	0.3
	Zapatón	Zapatón	800	2,855	25	713.8	3.6	0.9
		Bajo Chirripó	1,553	18,783	63	11,833.3	12.1	7.6
	Chirrió	Nairi-Awari	500	5,038	63	3,173.9	10.1	6.3
		Alto Chirripó	6,447	77,973	63	49,123.0	12.1	7.6
Cabécar	Tayni and Telire	Tayní	1,175	16,216	98	15,891.7	13.8	13.5
		Telire	1,175	16,260	100	16,260.0	13.8	13.8
	Talamanca	Talamanca Cabécar	1,031	22,729	34	7,727.9	22.0	7.5
	Buenos Aires	Ujarrás	2,400	19,040	34	6,473.6	7.9	2.7
	Talamanca	Talamanca Bribrí	6,579	43,690	75	32,767.5	6.6	5.0
Bribí	Talamanca	Kekoldi	360	3,538	50	1,769.0	9.8	4.9
		Salitre	2,900	11,700	60	7,020	4.0	2.4
		Cabagra	2,100	27,860	25	6,965.0	13.3	3.3
Brunca or Boruca	Buenos Aires	Curré	1,200	10,620	37	3,929.4	8.9	3.3
	Buenos Aires	Boruca	2,430	12,470	43	5,362.1	5.1	2.2
Térraba or Teribe	Buenos Aires	Térraba	750	9,355	10	935.5	12.5	1.2
		Conte burica	1,350	11,910	60	7,146.0	8.8	5.3
		Coto Brus	826	7,500	80	6,000	9.1	7.3
Ngöbe or guaymí	Ngöbe	Abrojos-Montezuma	330	1,480	50	740	4.5	2.2
		Osa	67	2,757	40	1,102.8	41.1	16.5
		Altos de San Antonio	104	75	100	75.0	0.7	0.7
Chorotega	Guanacaste	Matambú	37,404	327,516	57.0	186,752.1	8.8	5.0

Source: World Bank, Profile of the Indigenous Peoples of Costa Rica, Regional Technical Assistance Unit programme, May 2000.

H. Regions of greatest Afro-Costa Rican settlement

114. It is important to highlight the fact that several private organizations have done studies to obtain and document statistical data. For example the Minority Rights Group in England estimated in 1992 that, out of a population of 3.2 million in Costa Rica, 64,000 or 2% were of African descent. However, these figures are not official; it is hoped that the census of 2000 will produce an estimate of the total Afro-Costa Rican population.

115. Using the maps prepared by the Inter-American Development Bank for 1994, the areas of greatest Afro-Costa Rican settlement can be seen in the following table:

Cantos	*Surface area in sq. kms*	*Total population*	*Percentage of Afro-Costa Ricans*	*Population density as %*
Total Limón	1,765	69,728	45%	29,8
Total Matina	772	19,825	25%	19,0
Total Siquirres	860	38,959	15%	39,8
Total Guácimo	576	8,139	not given	28,0
Total Talamanca	2,809	15,956	30%	3,9
Total for province	9,188	233,628	not given	25

Source: Inter-American Development Bank, Communities of African ancestry in Costa Rica, Honduras, Nicaragua, Argentina, Colombia, Ecuador, Peru, Uruguay and Venezuela, 1996.

116. According to the study in question, the degree of black ancestry in Costa Rica is much greater than that suggested by usual estimates which only include persons of Jamaican descent.

117. As has been said, the national census incorporated the variable of the cultural group, thus giving a clearer picture of the ethnic composition of the Costa Rican population. By way of a parameter, the UNICEF records for 1996 show that in the province of Limon the Afro-Costa Rican population was 62,094 persons.[18]

118. The Afro-Costa Rican population is to be found throughout the whole territory of Costa Rica, although it is chiefly concentrated in the cantons of Limon, Matina, Siquirres and Talamanca as can be seen from the foregoing table.

119. The majority of the population, some 90%, is found in neighbourhoods like Pueblo Nuevo, Roosevelt and Bella Vista. In the cantons of Siquirres and Matina the Afro-Costa Rican population is concentrated in communities living along the old railway line and in the banana plantations. In the central canton of Siquirres, 30% of the population is Afro-Costa Rican and they are to be found in smaller concentrations in the communities of Cimarrones, El Cairo, Pacuarito, La Francia, La Germania and La Herediana. The oldest land-holdings are in Talamanca in such communities as Puerto Viejo, Cahuita, Home Creek and Manzanillo.[19]

120. Afro-Costa Rican groups point to the following as areas where there is a lack of government care: poverty, exclusion, their lack of visibility, the want of opportunities for social interaction, discrimination, work and education.

121. On the subject of poverty it has been said that, although studies by international organizations have pointed to the fact that black communities in Latin America are among the poorest of the poor, "those studies have not been widely disseminated and many officials and institutions in the area, dedicated to fighting poverty, are unaware of them".[20]

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[18] Along the same lines, see Quince Duncan and Donald Allen, Aportes para una comprension de la situacion etno racial en Costa Rica (Contribution to an understanding of the ethno-racial situation in Costa Rica), Consultancy for the Caribbean Project Association, November 2000, p.8.

[19] Inter-American Development Bank, op. cit.

[20] Duncan and Allen, op. cit., p.50.

122. The Afro-Costa Rican community is also demanding that they be brought into the spotlight and that adequate attention be paid them; combining its efforts, the Afro-Central American community as a whole presented to the presidents of the countries of the region meeting in San Pedro Sula, Honduras, in December 1995 the Declaration of Dangriga and La Ceiba in which they referred to the founding of the Central American Black Organization (ONECA) and their concern over the socio-cultural, political and economic marginalization of communities of African descent.

123. In regard to the way that minorities become lost to sight, the main concern was the lack of ethno-racial indicators to focus human development programmes. That situation was corrected by the census of 2000 referred to above.

124. Another subject of criticism is the lack of opportunities for social interaction and the absence of media in Costa Rica that ethnic minorities can use to raise and discuss matters likely to be taken up for debate at the national level.

125. With regard to the lack of equity and opportunities in employment, it is said that, although there is no absolute exclusion in Costa Rica, since the Legislative Assembly has had among its members representatives of the different ethnic communities, the same is not true of the judiciary or of state institutions such as the ministries, where there is a clear lack of proportion. The country has not yet had an indigenous or black magistrate or, despite the high percentage of Catholics in those communities, an indigenous or black bishop.

126. The concern is broader still, since "despite all the evidence of the inequality of opportunities affecting the black and indigenous sectors, this fact continues to be denied and to date no corrective measures have been taken in the national legislation, nor have policies been devised for the Caribbean regions to close this historical gap in the social, economic, political and cultural fields".[21]

II. NATIONAL INITIATIVES

A. Legal framework and proposed legislation

127. As was duly explained in the first section of this report, Costa Rica has a body of law which concerns itself with racial discrimination committed by directors, managers or other officials of public or private institutions who apply prejudicial discriminatory measures based on considerations of race, sex, age, religion, marital status, political opinion, social origin or economic situation.

128. The Criminal Code classifies such conduct as an offence, which means that it entails a monetary fine fixed by the courts according to the income of the offender and the sound judgement of the presiding judge.

129. The Legislative Assembly is studying several draft laws to complete the legal framework, the most worthy of note being the following:

130. Draft n° 13.875, entitled "Revision to article 15 B of Act n° 7839, the National Education System Act, to include among the characteristics of the population given in the national population censuses those of national origin and/or ethnic group and language". The importance of this draft is that it aims permanently to enhance the scope of the national censuses by ensuring that certain sectors of the

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[21] Idem., p. 55.

population are not lost to sight as happened for several years in the case of minority groups, a situation that was corrected in the recent census.

131. The core element in the revision of the law is the addition to article 15 that will in future read as follows:

> "b) In the forms for the national censuses of population and housing shall be included the following characteristics: national origin and/or ethnic group, language, religion and type of disability presented by the population, agricultural occupation and characteristics contained in the economic censuses used for the gathering of information on economic activities. A maximum period of ten years should be allowed to lapse between one census and another in the case of population and housing censuses and five years in that of economic and agricultural activity censuses."[22]

132. The proposed revision of the Criminal Code states that "anyone who applies, provides or carries out discriminatory measures for reasons of race, nationality, gender, age, political, religious or sexual preference, social position, economic situation or marital status shall be liable to 30 to 75 days' fine. If the person responsible is a civil servant, the applicable penalty of disbarment from office may also be imposed for a period of from six months to three years. Furthermore, the judge may in other cases impose the applicable penalty of disbarment for a period of from 15 to 60 days".

133. However, as was pointed out, what is wrong with this draft is that it also contemplates a penalty of a fine and not one of imprisonment, thus failing to make the intended punishment really effective.

134. Another draft in the legal pipeline is n° 13.977, entitled "Rights of Costa Rican ethno-cultural minorities to communicate their views".

135. The justification for this draft relies on the fact that the principles of non-discrimination and the positive principle of recognition of all human groups are present in many specialized international agreements and declarations, such as the United Nations Declaration and International Convention on the Elimination of All Forms of Racial Discrimination.

136. The written justification of the draft states that, despite the many legal instruments, manifestations of racism and discrimination still occur in our country. The jokes, racist expressions and funny stories bandied about daily by even the most innocent perpetuate that discrimination over time and throughout society. The lack of respect for physical integrity daily shown to black persons by touching their hair or their bodies as if they were "strange" also perpetuates relations of disrespect among people. Racist expressions can also be heard against indigenous people, Chinese and Jews, reproducing that same discrimination.[23]

137. The revision proposes that the State provide space in the different media for the discussion and analysis of the subject of Costa Rican minorities; state institutions will be authorized to use the 0.5% of the budget allocated to them for publicity for this purpose. The National Cultural Radio and Television Network (SINART), an official state network, will be able to devote up to an hour of its programming at an appropriate time each day to broadcasts on the subject of ethnic and cultural minorities.

138. Also under consideration in the Legislative Assembly is a draft law entitled "Ethnic and Linguistic Diversity Act", bearing the number 13.772. The purpose of this draft is to set aside a day for the

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[22] Draft law n° 13.875, published in Press Release n° 35 of La Gaceta n° 100, Thursday 25 May 2000, pp.1-2.

[23] Draft law n° 13.977, published in La Gaceta n° 122, 26 June 2000, pp.1-2.

commemoration of our country's ethnic and linguistic diversity. The written justification for this draft states that 12 October, formerly known as the Dia de la Raza (Our Race Day) and now named "the Day of the Meeting of Cultures", has not achieved its objective of integrating the different ethnic groups present in the country into the Costa Rican population. The Decree establishing the Day of Cultures has not succeeded in doing away with the myth that 12 October is exclusively a celebration of the contact between the indigenous and the Spanish culture, thus minimizing recognition of the other cultures, about whose provenance, contribution and persistence throughout history nothing is said. (The draft law has been adopted as Act n° 8054 and was published in La Gaceta n° 242 of 18 December 2000.)

139. The text declares one day in the year the day for celebrating ethnic and linguistic diversity, thereby contributing to "consolidating the political and social stability of Costa Rica". The last Sunday in September is proposed for the purpose and during the week preceding the day of commemoration and on the day itself official bodies, both centralized and decentralized, state teaching establishments and other centres of technical or vocational training are authorized to put on various activities in praise of ethnic and linguistic diversity and its values.

140. Recently another draft was submitted to the Legislative Assembly, with the number 14.137, proposing "to declare 12 October a national festival each year as just recognition by Costa Rica of the people of Limon for their constant devotion to preserving their cultural heritage as revealed in their own traditions nourished by the intermingling of races and their rich ethnic diversity".

B. Official campaigns to restore values

141. The centre and the focal point of the fight against discrimination is the effort in the schools to strengthen respect and tolerance. In Costa Rica the education programmes of the Ministry of Education seek to foster among children and young people principles of respect, understanding and the restoration of moral values so as to create for them a life of harmony in which solidarity, fraternity and co-operation play their part. Teaching about other peoples and cultures, so that pupils learn to respect human beings who have customs different from those of the majority, who speak other tongues and dress and think differently, is something that is being incorporated into the national education plans.

142. However, as was clear from the sessions of the ad hoc committee formed by the Foreign Office from among representatives of non-dominant ethnic groups, academics and representatives of non-governmental organizations to prepare our national position before the Preparatory Meeting for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, it must be said that our country has to rewrite its history. For years the view that has been propagated has been that of Caucasians from the Central Valley and the contribution and views of the indigenous, Afro-Costa Rican, oriental and other groups have been omitted.

143. Among the recommendations made by that body for implementation at the national level is the reform of the curricula of Costa Rican schools to include recognition of those contributions.

144. Over the last two years in centres of education a series of actions have been undertaken associated with the Declaration of Principles on Tolerance and the Plan of Action to follow up the United Nations Year for Tolerance.

145. In that regard, the second week of June 1999 was celebrated as the "Week of Peace" and activities such as walks and parades with appeals for peace were organized widely throughout communities. A student exchange took place also and sports events were planned, for the purpose of practising respect and tolerance; drawing and writing competitions were arranged and schools were decorated with slogans thought up by the pupils. Similar initiatives took place in the community institutions and businesses.

146. Other activities that took place were the study of the past customs of national ethnic groups, to learn their traditions and to foster appreciation of them, as well as the study of the contributions made by men and women of the beginning of the century and their consequent role in the country's traditions as a democracy and a land of peace; for that there were dances and songs and customs of the times were acted out. Tribute was paid to people famous in the community who by their honesty, hard work, integrity and devotion to a noble cause served as an example to children and young people.

147. Among the activities with emotional impact were meetings and convivial gatherings of young people to analyse the positive and negative aspects of human conduct, particularly that of Costa Ricans, and to propose solutions to problems like violence, the loss of values and intolerance. The final result of these events was a document addressed to the nation's leaders asking them together to endeavour to rescue those principles that for years had guided and characterized Costa Rican society.

148. Other actions undertaken by the Ministry of Education were the following. In March 1999 at the Limoncito School of Limon in the Atlantic region of the country was inaugurated a project for counselling and participation by schools and the community as the finishing touch to a course for children as Ambassadors of Peace.

149. On 14 September 1999 a ceremony took place to launch the collection "Towards a culture of peace", produced by UNESCO and Radio Netherlands, in the school of Gravilias de Desamparados south of the capital. High-ranking authorities from the Government and UNESCO were present.

150. During 1999, the programme "A Culture of Peace" was co-ordinated by the University for Peace, in the Lider Rincon Grande de Pavas School in San José, with the support of the community.

151. On 9 September 2000, the Presidency of the Republic, the institutions of the three branches of power in the Republic, the political parties, the churches, the private sector and the trade unions, the academic institutions, the professional associations and the non-governmental associations concerned with the defence and protection of the rights of children and adolescents committed themselves by their signature to supporting the project of a National Agenda for Children and Adolescents, 2000-2010.

152. That agenda, designed for implementation over a decade, shows the State's commitment to carrying out programmes and actions, drawing on the political will of its social partners, to guarantee all children and adolescents living in the country the conditions necessary for them to achieve the fullest development and physical, intellectual, moral, spiritual, social and emotional well-being.

153. As part of this institutional commitment, a section has been planned on long-term goals for the migrant, Afro-Costa Rican and indigenous population, comprising two points:

i) To guarantee access on an equal footing with others for the migrant, indigenous and Afro-Costa Rican population to the services and programmes being carried out to give effect to the rights of minors in those different groups and to offer them opportunities for their over-all development and incorporation into society and the world of work;

ii) To make the staff of the education, health and social system aware of the respect due to the beliefs, customs and languages of these groups.[24]

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[24] National Council for Children and Adolescents, Agenda Nacional para la Niñez y la Adolescencia - Metas y compromiso 2000-2010 (National Agenda for Children and Adolescents, Goals and Commitment 2000-2010), San José, September 2000.

C. Initiation workshops in indigenous communities

154. Pursuant to the recommendations made by the members of the Committee during the evaluation of the twelfth to fifteenth periodic reports in March 1999, the Ministry for Foreign Affairs proposed that the Centre for Juridical Research of the University of Costa Rica hold a workshop for the training of civil servants. Welcoming the initiative, the Centre prepared a project entitled "Training workshops for administrative officials within indigenous jurisdictions: fundamentals of indigenous legislation and the problems of its application", which was put into effect in October of the current year.

155. The project took the premise that "there are problems with the effective application of the laws protecting the rights of the indigenous peoples of Costa Rica and that this is due to misleading information given to officials who work in the indigenous regions and are responsible for implementing those legal provisions, but there are also ideological reasons for the problems that are the product of prejudices that have lingered throughout history in certain regions and that have marked the relationship of power wielded by the non-indigenous over the indigenous".[25]

156. The training was geared to administrative officials; that is to say, the staff of the central government institutions, autonomous institutions and in general the civil service, which have offices in the capital of the canton where each indigenous jurisdiction is located.

157. The project was organized into six basic teaching themes: the social situation of the indigenous peoples, the history of the indigenous peoples, legal aspects of indigenous life, environmental rights of indigenous peoples, production and the economy in relation to indigenous communities and institutional perspective on indigenous peoples.

158. The first seminar was held on 25 October 2000 in the community of Buenos Aires de Puntarenas in the southern region of the country and many indigenous inhabitants took part. Government officials from 18 executive institutions and more than a score of indigenous leaders attended and exchanged impressions with an expert on the subject from the University of Costa Rica; there were also master classes on legal concepts and fundamentals and a range of documents was distributed.

159. According to the records, a total of 44 persons attended the event, of whom 20 were indigenous and 24 from government institutions. Out of the total, there were six indigenous women and seven female officials from state institutions. Representatives of the indigenous communities of Boruca, Curré, Salitre, Cabagra and Conte Burica were among the participants.

160. Turning to the agenda, the following subjects were dealt with: consultation with indigenous peoples; the influence of non-indigenous entities in connection with the relations between indigenous and non-indigenous in the community; economic development in indigenous territories; and natural resources.

161. The initial assessment of this first pilot seminar was highly positive and at the second seminar, held on 24 January 2001, equally satisfactory results were obtained.

162. This second event adopted a different dynamic in its approach, since three representatives of public institutions presented the action plans of their respective institutions and there followed a debate with the indigenous representatives and the staff of the other institutions present.

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[25] Ruben Castro Chacon, "Training workshops for administrative officials within indigenous jurisdictions: fundamentals of indigenous legislation and the problems of its application", pilot proposal for execution in the canton of Buenos Aires de Puntarenas, July 2000.

D. Consultation process for the preparatory meeting for the world conference against racism, racial discrimination, xenophobia and related intolerance

163. For the purpose of reaching an agreed national position with a view to participation in the Regional Conference preparatory to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, to be held from 4 to 7 December 2000 in Santiago, Chile, the Ministry for Foreign Affairs organized an ad hoc forum in which various representatives of the indigenous, Afro-Costa Rican and Chinese peoples, as well as officials from non-governmental human rights organizations, public institutions and the academic world, were invited to take part.

164. In five working sessions, this broad group devoted itself to studying the five main themes of the Preparatory Conference that was to meet in Santiago, Chile in December 2000.

165. It should be emphasised how valuable was the work of consultation and exchange of views between the representatives of civil society and the public institutions on the problems of racial discrimination.

166. The following are the most important conclusions drawn from those working sessions, conclusions that were set forth in the preparatory meeting and that in turn provided the core of the agenda taken up by the Inter-Ministerial Commission which dealt with racial discrimination in our country and which will be referred to later.

167. In regard to the first theme to be considered in the Santiago meeting, "Sources, causes, forms and contemporary manifestations of racism, racial discrimination, xenophobia and related intolerance", it was concluded that we needed in our country to recognise the existence of racism and of cultural diversity and to adopt measures in the educational field taking into account the contribution of black, indigenous, Chinese and other peoples to the sciences, mathematics, history and other subjects.

168. Other conclusions pointed to the following priority actions: encouraging the teaching of tolerance in schools, fostering respect for diversity and recognition of cultural identity; promoting intercultural education particularly in the media; opening up opportunities for raising the whole population's awareness of the multi-cultural and multi-ethnic nature of our country; adopting official policies to guarantee the effective exercise of rights; adopting legislative reforms to establish effective penalties; attacking racism in all the forms it takes in our country, as expressed in such actions as denial and exclusion or mocking and making fun of people in jokes. Finally, with regard to this first theme, it was felt important to improve and perfect democracy by concentrating on full participation and respect, for which it is necessary to promote the idea of "us as a culture" rather than "the others as a culture".

169. During the second session the theme of "Victims of racism, racial discrimination and intolerance" was considered and it was concluded that in Costa Rica the burden of guilt is transferred in the sense that the person who denounces racism is generally classed as a racist or someone with a complex; we need to attack the myth of the white-skinned Costa Rican and, for that, strengthen our sense of multi-ethnicity and our multi-cultural nature. The task of education and its formative role was taken up again and finally it was felt that in the laws emphasis should be laid on penalization.

170. In relation to the third theme, "Measures of prevention, education and protection aimed at the eradication of racism, racial discrimination and intolerance at the national, regional and international levels", it was proposed to foster a culture of respect; to encourage policies of publicizing rights; to set up a data bank on people and jobs that would reflect cultural experiences and serve to promote values; to foster through education a broader view than simply the Central Valley one; and offer teacher-training and State assistance to minority groups to guarantee the effectiveness of the measures adopted.

171. At the fourth session on the theme "Provision of effective remedies, recourse, compensation and resources at the national, regional and international level", a national declaration recognising the country's multi-ethnic and multi-cultural nature was recommended; a revision of the Act on the National Indigenous Affairs Commission (CONAI) and the reform of that body were proposed, as were derogation from the demarcation decrees sponsored by CONAI in the indigenous territories; a reform of local laws to bring them into line with the provisions of ILO Convention n° 169; and even the granting of constitutional rank to the indigenous territories. Stress was laid on the need to educate the whole apparatus of the State in these matters; to review the structure and role of the country's participation in different international bodies; to set up a permanent body to review all the themes; to launch a national campaign for equity in employment; and, finally, to form an alliance of the different groups in support of legislative initiatives such as the plan to revise the first article of the Constitution so as to establish that Costa Rica is a multi-ethnic and multi-cultural country.

172. At the fifth session a wide-ranging review of the draft declaration of Santiago was undertaken and specific comments were made with the aim of having the Costa Rican delegation put forward the corresponding observations. The comments concerned the following areas: legal framework, creation of indicators concerning peoples, recognition and political participation, policies to fight prejudices and discriminatory attitudes, policies to guarantee full political and economic equality, protection of cultural heritage, mechanisms for obtaining justice, training and compensation, restitution and reparation.

173. It should be stressed that this forum and the considerations it outlined will serve as a basis for the Ministerial Commission appointed by the President of the Republic to define the national policy to combat all forms of racial discrimination.

E. Training for security forces

174. Where the training of authorities is concerned, the plans for instruction are aimed at inculcating in the agents of law and order full respect for the rights of all men and women so as to guarantee integral human development and personal dignity.

1. Penitentiary training school

175. The training of security personnel in the prisons is addressed to the following officials: security agents, security officers, security inspectors and security supervisors. Those officials receive a three-month training course, with a total of 300 hours in class. The course is divided into an internship and a period of tutorial assistance. The internship lasts for three weeks and the tutorials are based on a selection of texts. Each month a group of 30 students enters the school for the three-week internship; they take an examination as part of that and then for nine weeks receive tutorial support, at the end of which they take an oral examination.

176. The National Training School for Prison Officers comes under the Ministry of Justice. It provides a basic course for the penitentiary police, the general purpose of which is to ensure that the staff acquire the basic theoretical and practical knowledge to enable them to perform their duties effectively and competently, by a process of over-all training in consonance with the requirements of their specific occupational tasks in the prisons of the Costa Rican penitentiary system.

177. The curriculum comprises five modules: the preparatory teaching module contains the technical subjects to be studied; the humanistic module covers the national situation and the penitentiary system, United Nations minimum rules and other guidelines for the care of those deprived of liberty, and ethics; the legal module covers the Constitution and human rights, the provisions of the General Police Act and the Regulations for Penitentiary Police; the penitentiary module comprises six subjects: prison as an

institution and persons deprived of liberty, the institutional development plan, prison security and its function, elements of observation and techniques for streamlining information, preventive techniques in prison security and discipline in the prison context; the last module is administrative and covers internal and external monitoring bodies.

178. The training also includes day-long specialized courses, round tables and lectures within the penitentiary system, planned over a year to comprise 10 courses of 40 hours each, addressed to security staff, official agents, inspectors and supervisors.

179. As part of the institutional effort by the prison authorities to offer better training to their staff, the National Training School for Prison Officers, together with the Inter-American Institute of Human Rights and the non-governmental organization Penal Reform International, is preparing a project to institute in the prison system a master's degree in human rights.

180. The faculty of the Training School is composed of professionals with a solid academic background and a long career in the prison system. Each month one of the basic courses begins, there being a total of ten a year, while the specialized courses are held once a month for ten months. The subject matter of the courses is the same for both male and female prison staff.

181. The Costa Rican Government is aware of the situation of the men and women who are deprived of their liberty and respects it within the framework of its legal institutions and in view of its commitment to strengthen human rights; despite economic shortcomings, significant efforts are being made to meet internationally agreed standards and parameters. One such effort, part of our institutional planning, has been to launch in 2000 a 12-month course, held in the first week of each month on human rights in the penitentiary system, in particular so that the staff can learn and inwardly digest the Minimum Rules for the Treatment of Prisoners and other United Nations recommendations in the field of criminal justice.

182. The provisions of the General Police Act and the relevant regulations provide that, in order to embark on a career in the penitentiary police force one needs to have completed nine years of basic general education. The training centre is in San José.

183. With regard to the training of female prison staff, the nature of the work and the small number of women staff members have made it difficult to pay special attention to them; they take part in the basic courses according to availability in the centres, but they cannot be fewer than three in number.

2. Training for the Civil Guard

184. In its training programme the Civil Guard includes arrest and immobilization techniques, as well as ways of treating detainees, in accordance with the provisions of international instruments. The National Police School has a group of instructors on its staff who include lawyers, psychologists and security professionals. Basic schooling required for entry into the Civil Guard is up to and including the sixth primary grade; however, the trend is increasingly to have policemen incorporated into the police statutes, which require them to have completed at least the third year of secondary school.

185. Policewomen receive the same education as men, with the considerations due to their condition. At the Academy, women have a permanent office to attend to their needs, complaints and suggestions.

186. Refresher courses for police officers are given occasionally and concern civic values and humane treatment; however, the authorities are aware that they are still at an early stage. The National Police Academy students at present undergoing training are having systematic instruction in those subjects.

3. Training for the Judicial Investigation Body

187. To work in the Judicial Investigation Body one needs as a minimum to have completed one's general education (high school diploma) and to have passed the Basic Criminal Investigation Course.

188. Beginner investigators, both men and women, have to receive training in the Basic Criminal Investigation Programme, an 800 hour course, which covers the following subjects: the Constitution, human rights, criminal law, criminal procedure, juvenile legislation, Act establishing the Judicial Investigation Body, policies of the Judicial Investigation Body, use of the police force, handling and use of the system of police information, discipline, motivation, police agencies, ethics, a talk on the place of the judiciary, motivation and human relations, abnormal psychology, witness psychology, sociology, domestic violence, care for the victim, community relations, information to the public, stress management, forensic biology, body fluids, latent prints, toxicology, drug abuse, stimulants, paint, ballistics, die-cast numbers, traffic incidents, documents, fingerprinting, anatomy and physiology, forensic medicine, investigative procedures, assault, burglary and theft, vehicle theft, drugs, white-collar crime, life-threatening crimes, negotiators, scene-of-crime management, photography, planimetry, identification of persons, physical conditioning, self-defence, pistols, revolvers, shotguns, first aid, drawing up a report, radio communication and identikits.

189. Once they have completed the basic course, the participants are each assigned to a unit of the Investigation Body in some part of the country; there they continue their training for 563 hours more in what is called the Field Training Programme(PCAC) under the personal supervision of a field instructor, who has himself previously been trained to provide such in situ instruction.

190. To complement their basic training, criminal investigators undergo a process of permanent training in the form of refresher, specialized, complementary or advanced courses, according to the branch of investigation they are specializing in.

191. Where the treatment of detainees is concerned, criminal investigators receive ample training from professionals (judges and public prosecutors) in constitutional law, criminal procedure, the Juvenile Criminal Justice Act, police ethics, use of force, self defence and use of fire-arms. The approach to the two last-named subjects is always defensive and never offensive, on the principle that an individual's physical and psychological integrity is worthy of full respect.

192. It is essential to repeat that the training of this police force has always been governed and directed by the principles of law and respect for human dignity within the professional context of each of the departments of the Investigation Body. The human rights theme is not only part and parcel of the training process; it is in itself an important subject that has always been compulsory and is taught by professionals, both from the Office of the Ombudsman and from the Inter-American Institute of Human Rights. In addition to the material used in the master classes, the United Nations Manual on Human Rights is a compulsory document for study.

4. Training for the municipal police

193. With regard to the training of the municipal police, in the particular case of the Municipal Police of San José, the most important and the largest in the country, candidates before being recruited have to complete a 96-hour basic police course in order to be able, after recruitment, to follow an on-going practical training programme, complemented by talks, lectures, workshops and seminars on different topics.

194. The Municipal Police of Alajuela receive the same training as those of San José, thanks to an agreement signed by the two municipalities. Furthermore, the municipal officers attend seminars given

by the Attorney General's Office, in which the main theme is the need to treat people well and to give protection even to those who have broken the law.

195. The Municipal Police of Belén de Heredia train their officers for a period of three months in the National Police School. The training curriculum includes the following subjects: interpersonal relations, courtesy and discipline, weapons, security of premises, document drafting, police procedures and interventions, police ethics, self defence, combating drugs, road safety, first aid, buildings control, tracing, human rights, police legislation, municipal legislation, the State and society and physical conditioning. In addition, in the coming months classes are planned in computers and English.

196. However, despite the efforts undertaken in the field of training, constant intensive work still needs to be done in the police forces. In that regard, the Office of the Ombudsman has said that "since a large number of those who have jobs in the police force are persons with scarce resources, an incomplete education and no training or awareness courses in those subjects, circumstances lead them to adopt cultural stereotypes in their work".[26]

F. Co-operation by international bodies and non-governmental organizations in police corps training

197. In Costa Rica the non-governmental organizations do not co-operate directly in police corps training. However, the public universities, such as the National State Extension University (UNED) or the University College of Cartago and the private university Free University of Costa Rica have among the courses they offer some linked to the training of professionals in this area. International institutions such as the University for Peace, the (United Nations) Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD) or UNDP offer their co-operation on the theoretical side by holding talks and meetings.

198. The Municipal Police of San José, for its part, works in a co-ordinated manner with bodies such as the Arias Foundation for Peace and Human Progress, the non-governmental organization Defence for Children International Movement, the National Children's Trust, the Ministry of Justice and Pardon and the Inter-American Institute of Human Rights.

G. Government care for indigenous peoples

199. The indigenous peoples of Costa Rica have for years experienced government neglect; though a population with priority, they have throughout history had to face permanent exclusion from government programmes. In this attitude the State was responding to the criteria of a sector of society and its institutions were relying on a view presented as "universal", whereas it was in fact "particular", its main feature being that it disregarded or attempted to disregard the cultural differences in the population.

200. This situation, far from being peculiar to Costa Rica, was merely a reflection of the way in which the majority of Latin American States organized their affairs in a process that had strong colonial roots and that gained strength in the nineteenth and twentieth centuries.

201. Costa Rica has historically had a small percentage of indigenous people, which has meant that the indigenous peoples have lacked the force they needed to form pressure groups and, therefore, to influence the development proposals that the Costa Rican State was implementing. That situation has changed in recent years and one might even say now that the first signs are appearing of a social movement whose action is reflected in the 1990s mobilization of the Ngöbes demanding to be recognised as Costa Ricans,

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[26] Office of the Ombudsman, Communication PE-407-2000, 30 October 2000, p.15.

the process of formation and consolidation of the National Indigenous Council, the yearly marches by the Guaymies and the favourable verdict obtained by the Malekus in the Constitutional Court when they invoked their territorial rights.

202. Macro-economic indicators reveal a critical situation in the economic and social development of the indigenous communities. As an example, the Social Development Index, which is an indicator that measures the social gap between geographical areas, with a range of zero to 100, using variables such as education infrastructure, access to special education programmes, infant mortality, deaths between 0 and 5 years as a ratio of total deaths, small size of first grade classes in school, average monthly residential electricity consumption, and children born to single mothers, shows the following contrasts: for 1999 in San José the index is 63.7, in Heredia, 67.8 and in Cartago, 66.7; in contrast, in indigenous communities such as Bratsi in Talamanca Cabecar, the index is 0.90, in Boruca it is 20.40, in Buenos Aires it is 37.8 and in Rafael de Guatuso 47.20, to mention just a few communities.[27]

203. As can be seen from those examples, with a few exceptions, the vast majority of the indigenous territories have some of the lowest levels of social development in the country. This situation built up over the years when the Costa Rican State did not extend its government policies of security and solidarity to those territories. In this regard, the Report on the Nation for 1999 said that "in comparison with the average levels of social development in the country, these peoples are far behind, as a result of problems of unequal access and opportunities. Specifically, they have very little access to public health, education, housing and communal infrastructure services".

204. In its report for the year 2000 the Office of the Ombudsman said that the main shortcomings of the Costa Rican State in its care for indigenous peoples were the following:

i) The majority of the staff of government institutions were not aware of nor did they understand the specificity of indigenous peoples or its importance in the programmes of their institutions and so they denied them real and effective access to government services and as a result any chance of obtaining benefits;

ii) Government action in the indigenous territories is completely out of touch with reality and consequently any positive impact on the inhabitants is insignificant;

iii) The turnover among civil servants, including in the judiciary, hinders continuity in and the completion of medium-term programmes and means that any efforts to carry out valuable experiments in the indigenous territories depend more on "good will" and the particular interest of individuals than on any permanent plan in each institution;

iv) Government institutions do not co-ordinate their actions, which prevents an integral approach to many social problems that require joint action form the public sector;

v) There are too many theoretical diagnoses by the public sector and private organizations, without there having been to date any effective answer to the repeated demands of the indigenous peoples.

205. The same report of the Office of the Ombudsman for the year 2000 indicates as the chief forms of discriminatory conduct the following:

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[27] Ministry of Planning and Economic Policy, National Development Plan for the Indigenous Peoples of Costa Rica.

i) Lack of indigenous-language translators;

ii) Lack of information for the indigenous population about their rights or about procedures and formalities;

iii) Difficulties in notifying them about legal acts, given the geographical conditions where they live;

iv) Failure to match the provision of services to the real needs of indigenous communities (for example, the opening hours at health centres and public offices);

v) Ignorance of the indigenous world view;

vi) Failure on the part of government authorities to visit indigenous communities, in order to understand their milieu and adapt government action to their cultural environment;

vii) Failure on the part of the authorities to communicate with the indigenous population in general and an absence of specific government plans for that population.[28]

206. It is important to point out that as a result of the demonstration by Guaymi groups in the centre of the country on 12 October 1999, the Government of the Republic undertook a series of commitments, one of which was to form a High-Level Inter-Institutional Commission composed of the Ministers of Agriculture, Health, Housing, Education, Security, Employment, Culture and the Environment and the executive heads of the Institute for Agrarian Development and the National Children's Trust, co-ordinated by the Minister of the Presidency.

207. That High-Level Commission divided into three working sub-commissions to cover three different areas: the legal and institutional situation, to give legal guidance to the National Indigenous Affairs Commission (CONAI) and prepare for the General Assembly session; economic and social development; and the situation regarding ownership, control and exploitation of the lands in the reservations.

208. The Sub-Commission on Economic and Social Development took as its goal the preparation of the First Development Plan for the Indigenous Peoples of Costa Rica, which was to form part of the National Development Plan.

209. The conclusions of the Commission were officially published in November 2000 and basically acknowledged that "one of the specific explanations for the present situation in indigenous affairs is the lack of growth and development goals embodied in programmes of work".

210. The effect of this government action was recognised by the Office of the Ombudsman in its report for the year 2000, which says: "in that regard, we should highlight the position taken by the central Government at the end of 1999 in order to deal with the problems of the indigenous communities."[29]

211. In their daily life the indigenous peoples have been "rendered invisible" by the different organs of the State. This can be seen in the omission of the specific features of those communities from national programmes and their exclusion from the decision-making process, which lead to dislocation and a lack of sustainability in the execution of programmes.

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[28] Office of the Ombudsman, Annual report for the year 2000.

[29] Ibid., p.271.

212. Faced with that situation, the Office of the Ombudsman has implemented the second phase of a project for the promotion and defence of the rights of the indigenous peoples, which is now geared to the development of means to make those rights effective, a task that is supported by the Canadian Embassy.

213. "The general aim of this project is the progressive and participatory development of means to give effect to the fundamental rights of the indigenous peoples, taking as a basic reference the right to development with respect for cultural identity, from a platform of community demand and government response co-ordinated and evaluated by the beneficiary indigenous communities themselves."[30]

214. This second phase aims to consolidate the defence network in the indigenous territory of Talamanca and set up a defence network in the southern region (Buenos Aires, Cabagra, Salitre, Boruca, Rey Curre, Terraba and Ujarras); to create the conditions for a diagnosis of the situation in the territory of the Guaymi indigenous settlers and further the development of indigenous law within the Costa Rican legal order.

III. INTERNATIONAL INITIATIVES

215. At the international level, Costa Rica has maintained a consistent policy of the protection of human rights, as expressed in its co-sponsorship of various resolutions in the Commission on Human Rights, the United Nations General Assembly and the General Assembly of the Organization of American States.

216. In recent years Costa Rica has become one of the most active participants in the Working Group on Indigenous Populations, which gave rise to the International Decade of the World's Indigenous People, and in 1999 our country was chosen to host the Workshop on Higher Education and Indigenous Peoples.

217. Moreover, the present Special Rapporteur on the Human Rights of Migrants is of Costa Rican nationality and, on the occasion of the Regional Conference to prepare the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Chile in December 2000, Costa Rica was represented by its Vice-Minister for Foreign Affairs, who was elected Vice-Chairman of the Conference.

218. On the sensitive subject of migration, with the International Organization for Migration we co-ordinated the Symposium on International Migration in the Americas, held in our country from 4 to 6 September 2000.

219. Finally we should stress that Costa Rica implements United Nations General Assembly resolutions in a responsible manner, a clear example of this being found in document A/55/275 of 8 August 2000 regarding resolution 54/166 of 17 December 1999 on the protection of migrants. That document states that at the time when the Secretary-General presented his report only four nations in the world, among them Costa Rica, had submitted their replies.

A. General Assembly resolutions supported and co-sponsored

220. At the fifty-third session of the United Nations General Assembly in 1999 Costa Rica co-sponsored the following resolutions.

221. Under item 107, "Programme of Activities of the International Decade of the World's Indigenous People", draft resolutions L.19, "International Decade of the World's Indigenous People", and L.20,

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[30] Ibid., p.267.

"Programme of Activities of the International Decade of the World's Indigenous People", were co-sponsored by us and adopted without a vote both in the Third Committee and in the Plenary.

222. Under item 108, "Elimination of Racism and Racial Discrimination", draft resolutions L.18, "International Convention on the Elimination of All Forms of Racial Discrimination", L.24, "Third Decade to Combat Racism and Racial Discrimination and the convening of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance", and L.24, "Measures to combat contemporary forms of racism, racial discrimination, xenophobia and related intolerance", were co-sponsored by us and adopted without a vote both in the Third Committee and in the Plenary.

223. At the fifty-fourth session of the United Nations General Assembly, under item 113, "International Decade of the World's Indigenous People", draft resolution L.45, with the same title, was co-sponsored by us and adopted without a vote in both the Third Committee and the Plenary.

224. Under item 114, "Elimination of Racism and Racial Discrimination", draft resolutions L.26, "Measures to combat contemporary forms of racism, racial discrimination, xenophobia and related intolerance", and L.28, "Third Decade to Combat Racism and Racial Discrimination", were submitted by the Group of 77 and adopted without a vote in both the Third Committee and the Plenary.

B. Human Rights Commission resolutions supported and co-sponsored

225. In 1999, at the fifty-fifth session of the Commission on Human Rights, during the consideration of agenda item 6, "Racism, Racial Discrimination, Xenophobia and Related Intolerance", our country co-sponsored draft resolution E/CN.4/1999/L.60, with the same title, which was adopted without a vote. At the fifty-sixth session of the Commission, Costa Rica also co-sponsored a draft resolution on the same item.

226. At the fifty-fifth session, under agenda item 14, "Specific groups and individuals", our country co-sponsored draft resolution E/CN.4/1999/L.63/Rev.1, "Human rights of migrants", introduced by Mexico and adopted without a vote. We also co-sponsored that resolution at the fifty-sixth session.

227. Under the sub-item "Minorities" of the same agenda item, Costa Rica co-sponsored two draft resolutions, E/CN.4/1999/L.71, "Rights of persons belonging to national or ethnic, religious and linguistic minorities", and E/CN.4/1999/L.72, "The protection of human rights in the context of human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS)".

228. At the fifty-sixth session of the Commission, held in 2000, under item 14, "Minorities", Costa Rica co-sponsored the draft resolutions E/CN.4/2000/L.70, "Rights of persons belonging to national or ethnic, religious and linguistic minorities", and "Contemporary forms of slavery".

229. Under item 15, "Indigenous issues", at the fifty-fifth and fifty-sixth sessions, Costa Rica co-sponsored the following draft resolutions:

i) "Working Group on Indigenous Populations of the Sub-Commission on the Promotion and Protection of Human Rights and the International Decade of the World's Indigenous People", introduced by New Zealand and adopted without a vote;

ii) "Working Group of the Commission on Human Rights to elaborate a draft declaration in accordance with paragraph 5 of General Assembly resolution 49/214 of 23 December 1994", introduced by Canada and adopted without a vote;

iii) "Establishment of a Permanent Forum on Indigenous Issues", introduced by Denmark and adopted without a vote.

C. Organization of American States General Assembly resolutions supported

230. During the twenty-ninth session of the General Assembly of the Organization of American States (OAS), held in Guatemala City, the most important relevant resolutions supported by Costa Rica were the draft American declaration on the rights of indigenous populations, adopted on 7 June 1999 at the first plenary meeting and the draft on the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, adopted as OAS General Assembly resolution 1695 at its fourth plenary meeting on 8 June 1999.

231. During the thirtieth session of the OAS General Assembly, held at Windsor, Canada, Costa Rica supported the following resolutions relevant to the subject under discussion:

- Resolution 1717, "The human rights of all migrant workers and their families", adopted at the first plenary meeting on 5 June 2000;
- Resolution 1708, "Proposed American declaration on the rights of indigenous populations", adopted at the first plenary meeting on 5 June 2000;
- Resolution 1712, "Preparation of a draft inter-American convention against racism and all forms of discrimination and intolerance", adopted at the first plenary meeting on 5 June 2000.

D. Factors limiting the full integration of migrants

232. On the basis of the principle contained in article 19 of the Constitution referred to earlier, Costa Rican legislation prohibits unequal treatment of nationals and migrants; nor do state institutions have any systematic policy of encouraging discrimination. To the contrary, the Costa Rican State demonstrates by its many public policy programmes that what guides its policy is full respect for the human rights of all its inhabitants, without any distinction based on considerations of ethnic origin, culture, language or any other factor that could lead to discrimination that flouts human dignity.

233. Unfortunately, there do remain some signs of differentiation between Costa Ricans and Nicaraguans, many of them the product of a range of factors linked to cultural interaction.

234. Differences of accent and some physical features that characterize the Nicaraguan migrant population are elements that have been used in some areas of the Central Valley very subtly to isolate that population; to them is also attributed a peculiar propensity to resort to violence to resolve their everyday problems. In contrast, their devotion to hard work is recognised as a positive characteristic.

235. In view of these attitudes, many Nicaraguans have chosen to adopt Costa Rican cultural ways, hiding their accent and other signs that "betray" their nationality; some even identify themselves as "guanacastecos" - natives of Guanacaste, the Costa Rican province that borders Nicaragua, whose inhabitants have very similar physical features.

236. Field studies have shown that an important point to retain is that the greater the contact between nationals and Nicaraguans the less the tendency to create stereotypes.[31]

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[31] "Otros reflejos de la inmigracion" (Other reflections of immigration), La Nacion, Wednesday 8 December 1999, "El pais" section, p.5A.

237. A recent forum organized by UNDP with the title "Costa Rica and Nicaragua: civil society's dialogue" enabled experts from Costa Rica and Niçaragua to exchange various experiences and among the issues considered were the processes of culture. In that regard they recommended "correcting the flaws in the collective imagination of both countries that affect their binational relations, as the best way of combating the prejudices that exist in the two countries. They proposed working with children, with the aim of elaborating principles of identity and tolerance. They also proposed working with journalists and those with the means for research and exploring the possibility of exchanges between communicators in the two countries."[32]

238. The application of the different legal instruments, whether by administrative or judicial means, is somewhat imprecise, as is reflected in daily life. For example, the Family Code in articles 242 and 246 recognises any de facto union between a man and a woman who are legally in a position to contract matrimony that is their sole union, is publicly known and stable and has lasted for more than three years. The judicial recognition of the de facto union serves to regulate various questions of inheritance. However, the General Directorate of Migration and Aliens still does not recognise de facto unions between Costa Ricans and foreigners for the purposes of that bond, even though in practice it is a form of cohabitation that is on the increase and is recognised as a form of marital status.

239. Another example of this situation is access to health services. The Health Insurance Regulations stipulate the protection of family benefits in cases of free or de facto union and say that the man or woman has the right to family health insurance, so long as they have lived together in a stable relationship under the same roof for a year or more (art.1 b). However, de facto unions between Costa Ricans and illegal Nicaraguan immigrants are not always recognised for that purpose.

240. In employment, despite the legal measures that have been adopted and the executive action taken, there are still some situations where illegal immigrant workers are treated less favourably. Although article 92 of the General Act on Migration and the Status of Aliens forbids the recruitment of aliens illegally resident in the country, in practice such recruitment does occur. Nevertheless, even if they violate that law, employers are not exempt from the obligation , recognised in article 100 of the same Act, to give their workers the remuneration and social safeguards prescribed by law.

241. Article 100 states precisely that "the discovery of a violation does not exempt employers from paying the wages, salaries and other remuneration due the staff they have recruited in violation of the provisions of this law".

242. A statement by the Legal Department of the General Directorate of Migration and Aliens stipulates that "what generates the obligation to provide insurance is the dependency of the worker in question; his migrant status does not have any overriding effect". This confirms the fact that all workers, whatever their migrant status, have the right to insurance.

243. In practice there have been situations where independent employers of illegal immigrant workers have paid them a wage below the legal minimum and have not provided such social benefits as health insurance, disability insurance, pension, life insurance, industrial accident policy or other work-related benefits (Christmas bonus, vacations, severance pay, prior notice). However, the Government of the Republic has taken various actions to combat this evasion of legal responsibility by employers, in order to guarantee the enjoyment of their labour rights to all workers, without any distinction as to nationality (visits by labour inspectors and the migrant amnesty, inter alia).

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[32] UNDP, "Costa Rica and Nicaragua: civil society's dialogue", May 2000, p.53.

244. As for female migrants under the age of 15, the Labour Code and the Code on Children and Adolescents stipulate that they cannot be recruited. Unfortunately, as happens nearly everywhere in the world, economic and social conditions have compelled many migrant women to join the labour force as illegal workers, which means they are reluctant to seek on-the-job protection from the authorities in the Ministry of Labour. This group represents a sector of the immigrant labour force that works in very precarious conditions and in a situation of risk, exacerbated by the fact that they have abandoned their studies and so cannot learn to do better paid work.

245. To remedy this situation, the Government has through its different organs undertaken campaigns to raise awareness in the workplace, in addition to the regular visits made by officials from the Ministry of Labour and the Directorate of Migration and Aliens throughout the length and breadth of the country.

246. Another important factor influencing this state of uncertainty among workers is their profound ignorance of their rights as persons, regardless of their migrant status. A study by the Latin American Faculty of Social Sciences (FLACSO) entitled "Adolescent girls and migration between Costa Rica and Nicaragua" reports that adolescent immigrants do not know what their rights are in Costa Rica. This implies "a negation of the citizenship principle and they perceive themselves as persons without rights. The duties they recognise are those of their employment and the duty to work to support their families". This is what has led the national authorities to undertake massive campaigns to publicize human rights, so that migrants can live in an atmosphere of full respect for their human dignity.

IV. RACIAL DISCRIMINATION AND INFORMATION TECHNOLOGY

A. General considerations

247. As has been fully explained in earlier paragraphs, Costa Rica has ample legislation on discrimination, but much of it lacks a punitive component to make it effective in practice.

248. That point has been fully discussed in meetings organized by the Ministry of Foreign Affairs with representatives of minority groups and officials from institutions concerned with the matter during the national preparatory meetings for the Regional Conference against Racial Discrimination. One of the chief recommendations made was to establish penalties in the law, because at present discriminatory practices are defined as offences.

B. Xenophobia on the internet

249. On the other hand, the country lacks rules to govern the use of the Internet and, in particular, the crimes committed using that form of communication; in this connection, Costa Rica submitted to the Office of the United Nations Commissioner for Human Rights a report on Human Rights Commission resolution 1999/78 concerning "the exploitation of the Internet to stir up racial hatred and disseminate racist and xenophobic propaganda".

250. Among the most important points made in the report were the following:

251. Discrimination has developed in a manner most harmful to the human race, on the basis of varying degrees of prejudice, ignorance and fear. The instigators of such practices as extermination, murder, enslavement, the imposition of apartheid, cultural or social displacement, drug-trafficking and the sale and prostitution of minors today have a new vehicle to publicize their ideas and activities.

252. The existing communication networks are beginning to transmit information in the private as well as in the public sphere concerning individuals and whole countries and so international forums have been

compelled to take up the issue of what type of information belongs to the public domain and what is private.

253. Parallel to the development of telecommunications is the great progress made in computerization. In the 1980s Radiografica of Costa Rica began the development of data transmission by setting up the RACSAPAC Public Data Network which made possible communication between computers, use of electronic mail and access to national and international data bases.

254. In recent years Radiografica has brought into operation a national and international high-speed data transmission service, which has enabled many businesses, institutions, research centres and individuals to be connected to the world-wide Internet, in a context of total openness and full access to information.

255. Costa Rica, as an integral part of the global community, has acquired computer technology and today a large part of its education policy is geared to giving the use of computers a major role in teaching.

256. The users with access to these networks are people from all walks of life, children, young people and adults, peasants and businessmen, professionals, the media, government bodies, private enterprises and social groups. Access to technology and, in particular, to the Internet in our country is limited only by one's economic means and this is the context in which companies and organizations dedicated to spreading xenophobic ideas and pornography and engaging in sex-related activities have also been able to profit from cybernetics.

257. Costa Rican legislation virtually fails to regulate the Internet service. Neither the Constitution, promulgated in November 1949, nor the Criminal or the Commercial Code contains any express provisions about the content of information transmitted over the Internet.

258. The Civil Code, in article 47 concerning the rights of the person, does stipulate that "images and photographs showing persons in stereotyped roles that reinforce discriminatory attitudes towards sectors of society cannot be published, reproduced, exhibited or sold in any form" (as revised by Act n° 7600 of 2 May 1996).

259. The debate about freedom or the regulation of information here begins to play an important role. The Constitution of Costa Rica in article 29 provides that any person may communicate his thoughts orally or in writing and publish them without prior censorship. However, the same article notes that that person "shall be responsible for abuses committed in the exercise of this right, in such cases and in the manner established by law".

260. On the face of it that text is clear and establishes the responsibility of anyone who communicates his ideas. The problem inherent in the globalization of communications derives from the fact that the person communicating the ideas may not be a national of the State concerned or may not be in the country concerned. How then can responsibility be established?

261. Our country has, however, recently begun to deal with these issues from the required appropriate legal and political standpoint, motivated perhaps, like many other countries, to highlight the debate on what should and what should not be regulated, and this is having an effect on society in regard to the rights and freedoms of the individual.

262. Although the country has the institutional and legal apparatus to implement the Constitution, there still is no clear and specific control concerning computers and privacy. The Costa Rican constitutional system still lacks a precise instrument to regulate the handling and processing of information.

263. In this process of globalization where there are no physical frontiers, the question arises as to who should regulate the information circulating in cyberspace and how it is to be done. In the State of Costa Rica we have basically approached the question through teaching and considering how to treat computer science.

264. By the project Computer Sciences for Education 21, the country has joined a computer platform that will allow 230,000 children and young people to consult and surf the information networks offered by the Internet.

265. Nowadays it is necessary to establish a "policy of acceptable use of Internet resources" which allows one to define how these resources are used and to monitor and guarantee that their use serves the educational interests of each institution and, especially, concords with the objectives set by the Ministry of Public Education in its programme of computer sciences in education.

266. What has been of concern to the Costa Rican education authorities are the mechanisms that will have to be used if we are to foster the use of this great resource from the point of view of forming students as producers rather than consumers of the information travelling through cyberspace. The ideal pursued by the project is to have all the children and young students understand what they are writing, share their thoughts and what they create with others and assume responsibility for what they write.

267. Computer Sciences for Education has been part of the school curriculum since 1989, when 120 computer laboratories were opened in rural and marginal public schools. In 1991 the first telecommunications network linking all the schools throughout the country began operation.

268. By means of this network Costa Rican students exchange information they have gathered from books or that they have produced themselves and the teachers in their turn have an instrument enabling them to implement new teaching strategies, exchange them with their colleagues or place them at the service of their pupils. Since 1998, this network has been extended beyond the primary to the secondary and university levels.

269. We should make it clear that not all educational establishments have this service. Of the 190 schools in the country, 117 have planned access, while 49 already use the electronic mail.

270. As part of this system, last July a discussion on the Code on Children and Adolescents was held by computer connecting 14 schools in the country, a debating forum that made known the views of children on the rights protected by that legal instrument.

271. One of the weightiest reasons that led the education authorities to adopt that decision was a sampling done by the University of Costa Rica in the early part of 1998 concerning Internet access, which established that during working hours 20% of employees and university students accessed the Internet for purposes of research and work, while 80% used it to surf pornographic websites, spending many working hours on that, to the grave detriment of the State economy.

272. The Ministry of Education, the universities and the Omar Dengo Foundation, which are responsible for education at the primary and secondary levels, are looking into the legal implications of a completely unrestricted introduction of the Internet into schools. The authorities have begun to discuss the following questions: Which will be the sites students can have access to? What happens if parents ask about the instruction their children are receiving? How to treat the freedom of expression and free access to information that the Constitution guarantees?

273. The State of Costa Rica has a duty to regulate and punish all acts and practices that infringe human honour and dignity, that degrade or disparage human beings or discriminate against them for ethnic,

religious or cultural reasons or because of their colour, sex, language, political or other opinions, economic situation or physical disabilities or for any other reason contrary to the values of Costa Rican society.

274. The freedom to publish on the Internet means that material and content is on offer to beginner users making their first contacts in order to increase their knowledge and experiment with new ways of learning which, far from forming their minds, disorients them, a disadvantage that contrasts with the benefits provided by the network.

275. The Ministry of Public Education is planning to install an access filter to block certain material not suitable for students, particularly that related to sexual exploitation, pornography, racism, drugs and other subjects that might be treated in a manner not to be recommended for students. Aware of these problems, the Ministry, through the Department of Computer Sciences for Education, is working with the Costa Rican Electricity Institute, using its Internet service for educational establishments reflected in the Edunet network, to find a solution. That will initially require the acquisition of special equipment to permit centralized monitoring of content to prevent access to material that degrades human beings.

276. To date, in view of the demand from educational establishments and the need to bring this tool to students so as to further the development of educational projects with up-to-date resources and information, we have begun to install the service in a substitute form in secondary schools, even though we do not yet have the equipment needed to control access to sites unsuitable for the healthy development of the individual.

277. At present, access to the Internet in educational establishments is open, without controls or filters, which means that the teaching staff have a heavy responsibility for supervision. They are being helped to develop in their students a practical awareness that will enable the students themselves to weigh the following questions: What are the rules for the production of documents? What information do we have available? What is the role we should play in selecting information? In that way they will be both judge and jury in the knowledge-building process.

278. In this regard it is also important to bear in mind that what happens within the school is the responsibility of the teachers. For them the Internet is only a tool for purely educational use and, consequently, the kind of usage that would lead to inappropriate or illegal conduct after consultation of sites that promote the sort of material referred to above is out of the question. The role of the teacher is to lay down rules to control student access to the net and to determine in what conditions and with what expectations access may be accorded their pupils.

279. As part of the training process, on 23 July 2000 the first training course began as a pilot project with computer teachers from the capital. The main point of the course was to permit an assessment of the teachers' approach to the above-mentioned objectives concerning Internet use and the recommendations issued regarding access to certain information on the net.[33]

C. Role of the media

280. As in any part of the world, the national media play a crucial role in the active, rather than passive, description of ethnic events in our society. The mass media are the first to define racial situations, so that the use of such material is the result of prevailing cultural prejudices and the way in

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[33] Report of Costa Rica on Human Rights Commission resolution 1999/78 concerning "exploitation of the Internet to stir up racial hatred and disseminate racist and xenophobic propaganda", August 1999.

which those media cover racial news. Given that state of affairs, the members of minorities are not being justly and fairly represented in all spheres of Costa Rican society.

281. The most obvious case of such manipulation of information was that of a Chinese restaurant which in 1999, after having been closed for two months, was subjected to an inspection by the regional office of the Ministry of Health in Cartago. On that occasion the premises, in which a restaurant serving Chinese food had been operating, were found to have been evacuated following a rental dispute with the Cartago municipality. Despite that fact, the health inspectors maintained they had found evidence of a rat farm that the proprietor might have used to meet his need for white meat.

282. This situation was used by the press and then by the public who accepted the information as true, since the belief that "the Chinese eat rats" is part of local culture. The information was rejected by a minority, but the majority accepted it as true out of prejudice and because the media had reported it. Despite the fact that some days later the Ministry officials concerned were relieved of their functions because of the incident, the media did not have the decency to issue a rectification and for a long time the Chinese restaurants were hard hit by a loss of custom.

283. Another example of prejudice on the part of the press is its dissemination of the idea that there is a Chinese mafia operating in Costa Rica which carries out kidnappings, attacks and murders, when the police have not even been able to prove any connection between the various isolated criminal acts. It is indeed possible that there exists a gang of antisocial Chinese from abroad who have acted in this way, although there is no proof of it, but the unfortunate thing is that these crimes have been presented as the acts of an organized mafia and all Chinese as mafiosi because they are different, with the simple intention of selling more newspapers and improving audience ratings.

284. An inquiry published by the Journalists' Association about the attention paid to different groups in the media showed that 72% of the news refers to representatives of the governing elite and the other 28% to individuals who are not part of that elite; 65% of those who are not the elite are represented in a negative way as the authors or the victims of violent acts or disturbances and only 35% of that non-elite group are shown involved in neutral or appropriate activities.[34]

285. Here it is important to point out that the Centre for the Academic Training of Communicators (CEDAC) of the Costa Rican Journalists' Association and the Costa Rican Mission to the United Nations are working on a project of international co-operation to train communicators to fight xenophobia and racism.

286. The general aim of the project is to teach various groups of communications students and journalists from the different media how to combat racism and xenophobia and to understand and practise professional ethics, the culture of peace and human rights.

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[34] Jimen Chan, Medidas de prevencion, educacion y proteccion orientadas a la erradicacion del racismo, discriminacion e intolerancia a escala nacional, regional e internacional (Prevention, education and protection measures geared to eradicating racism, discrimination and intolerance at the national, regional and international level), November 2000.

V. THE SITUATION REGARDING RIGHTS

A. Civil and political rights

1. The right to equality before the law and in the administration of justice

287. Due process is a principle enshrined in the Constitution, whose article 39 reads:

> "No one shall be made to suffer a penalty except for a crime, wrong, or misdemeanour punishable by pre-existing law, and in consequence of a final sentence imposed by competent authority, after opportunity has been given to the accused to plead his defence, and upon the necessary proof of guilt."

288. In its report for the year 2000 the Office of the Ombudsman stated that "this affirmation of equity necessarily involves recognising equality without annulling diversity. In recognising the principle of equality before the law one cannot cease to be sensitive to differences nor, especially, fail to acknowledge the circumstances of those population groups or individuals who may for various reasons find themselves in situations of particular vulnerability (i.e. ethnic groups such as indigenous or Afro-Costa Rican peoples or economically excluded social groups). Following this view, the State must guarantee the effective implementation of the right of access to justice, over and above the letter of article 33 of the Constitution which says that 'All persons are equal before the law'." [35]

289. In consonance with the provisions of its article 33 and 39, the Constitution in article 19 provides that foreigners have the same individual and social rights and duties as Costa Ricans, with exceptions and limitations as the Constitution and the laws establish.

290. In regard to the presence of nationals and foreigners, according to national jurisprudence "the Constitution in article 22 guarantees to Costa Ricans freedom to enter and remain in the national territory, but not to foreigners who must submit to the regulations governing all aspects of migrant control". [36]

291. When a foreigner stays longer than his migrant status allows and does not regularize his situation as the law requires, there are grounds for deportation in accordance with the General Act on Migration and the Status of Aliens, article 118, paragraph 3.

292. In regard to indigenous peoples, Costa Rica does not have a law specifically guaranteeing them legal advice and the assistance of an interpreter, the rules of general procedural legislation both civil and criminal being applicable in such a case, since they mandate the presence of an interpreter to assist persons who do not speak Spanish and free legal aid in criminal cases where the accused lacks the means to ensure his own defence.[37]

293. In spite of the foregoing, one of the most disputed issues is the lack of penalties for crimes of racial discrimination. Although on 5 January 1967 Costa Rica endorsed the International Convention on the Elimination of All Forms of Racial Discrimination, thus committing itself to "ensure to everyone within [its] jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and

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[35] Office of the Ombudsman, Communication PE-407-2000, 30 October 2000, p.8.

[36] Constitutional Court, vote 2517-96, 9.30 a.m., 31 May 1996.

[37] Attorney-General's Office, Communication PGR 322-99.

fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination", in 1970 a Criminal Code was enacted that in regulating the crime of discrimination only imposes days of fines, which is a departure from the international regulations which impose up to 25 years' imprisonment.

294. A new draft criminal code is at present before the Legislative Assembly in which a penalty of days of fines is also imposed:

> "Anyone who applies, provides or carries out discriminatory measures for reasons of race, nationality, gender, age, political, religious or sexual preference, social position, economic situation or marital status shall be liable to 30 to 75 days' fine. If the person responsible is a civil servant, the applicable penalty of disbarment from office may also be imposed for a period of from six months to three years. Furthermore, the judge may in other cases impose the applicable penalty of disbarment for a period of from 15 to 60 days."

295. As the Office of the Ombudsman has affirmed, the absence of a legally prescribed punishment must be pointed to as one of the chief obstacles in the legislation, regardless of any other criminal regulation.[38]

296. With the aim of showing justice to be a right and not a benefit of legal procedure, the Office of the Ombudsman in its report for the year 2000 proposed several points as essential components of that human right.

297. The first recommendation is that detailed information be given to the inhabitants of the country telling them what their rights are with regard to the public service of the administration of justice. Basically this would be information on guarantees and procedures and the duties vis-à-vis the judiciary of those resorting to the law.

298. In several of the final reports issued by the Office of the Ombudsman concerning the judiciary is noted the need for that body to inform users in detail about their rights and duties in connection with a trial; but there has also been a recommendation for a closer and better relationship between those who administer justice and those who seek it, because this would not only give the latter confidence but would also prevent misunderstandings on the part of the judicial officers.[39]

299. A second recommendation concerns freedom of access without any barriers, whether they are physical or due to people's attitudes. The report points out here that perhaps the most difficult barriers to overcome are those that reflect an attitude of discrimination against persons with disabilities, persons with scarce economic resources or those belonging to different ethnic groups, an attitude that is unconscious even that there is discrimination involved.

300. If there is no team of interpreters, problems arise for those who require those services in order to communicate with the judicial authorities. The Office of the Ombudsman gives the example of a Guaymi person accused in a criminal case, who could not communicate with the judicial authorities because he only spoke his native language and understood very little Spanish; he was told that he had to bring with him an interpreter he could trust and pay all the latter's expenses.[40]

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[38] Office of the Ombudsman, Communication PE-407-2000, 30 October 2000.

[39] Ibid., p.10.

[40] Ibid.

301. Further to this issue, the report states that migrants have problems when they require an appropriate identity document is required in order to act to safeguard their rights. The result is that they lose their claim or abandon it; this is chiefly the case with regard to employment.

302. The third point identified by the Office of the Ombudsman as a recommendation to guarantee the right to justice is free access and defence for those who, through a lack of economic resources, are not in this on a footing of equality with other inhabitants. The important thing here is that access to justice presupposes non-payment, not only because what is involved is a basic public service provided by the State but also because it is an instrument permitting the defence of fundamental rights and reparation or compensation for violations of human rights.

303. The fourth recommendation is to guarantee prompt, punctual, timely justice without delay. Justice done on time confers legitimacy on the whole system, the contrary destroys that legitimacy. Justice as a value and a supreme good must be impartial and incorruptible and must guarantee to each person what is due to him in his particular situation.

304. Finally, the report recommends devising social mechanisms to obtain greater access to justice. As it says, not all sectors of society have equal opportunities or means of access. Whether because of their economic circumstances, level of education, geographical situation, language or social group (in the case of ethnic minorities) or for other reasons, it is not equally possible for all in Costa Rica to resort to the system of justice and find an answer to their legal needs in situations where they feel their legitimate rights or interests are affected.[41]

305. Where legal aid is concerned, one of the most recognised models is the system of legal consultancies, that of the University of Costa Rica, set up in 1967, being the one with most experience and influence. In recent years some private universities, like the Latin University, have also established legal consultancies.

306. Other private mechanisms in operation offering legal aid are the Women's Legal Advice Centre, the Alliance of Costa Rican Women, which gives advice on family, criminal law, labour and constitutional rights, and the Legal Assistance Programme for Rural Indigenous Peoples and Peasants (PAPRIC), which chiefly deals with matters of concern to rural and indigenous communities.

2. Right to personal security and State protection against all acts of violence by public officials

307. In its previous consolidated periodic report, Costa Rica related the legal case of the young Lee Malcon. Since the report was submitted a series of judicial resolutions have been adopted that are worth mentioning. Once again the following were the circumstances of the case.

308. Among complaints lodged against officials of the Judicial Investigation Body (OIJ), which serves as the technical police force of the judiciary, the most relevant case is the trial of three ex-officers accused of the murder of the young William Elember Lee Malcon.

309. It all began on 16 September 1993, when an agent of the OIJ was carrying out a raid in San José to catch juvenile delinquents. While the agents were passing through the neighbourhood of the hospital San Juan de Dios, they spotted and arrested Lee Malcon. The young man died shortly thereafter, having apparently received a heavy blow.

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[41] Ibid., p.10.

310. The newspaper La Nacion described the events thus on page 4 A of its issue of 18 September 1993:

> "On Thursday night Lee Malcon, Robinson Watson, the deceased and three other youths were seized by criminal investigation officers of the Assault Division in the vicinity of the hospital San Juan de Dios. [...] They were taken to the OIJ building where they remained for an hour. [...] The chief of the Attorney-General's Office accused the investigators of not having proceeded normally, in that they had failed to report either the arrival or the departure of three of those arrested. [...] Lee Malcon was taken by a group of police officers who were supposedly being led by him to a place where the gang had weapons concealed. [...] At a time not yet determined the detainee was tortured and killed."

311. As a result seven criminal investigation officers were taken to court and tried on 8 July 1997 by the First High Court of Criminal Affairs in San José, which acquitted them of the crime of homicide for lack of evidence and convicted them of abuse of authority. However, they appealed against the conviction in the Court of Cassation , which overturned the verdict. In a subsequent verdict the Court sentenced each of the three former officers to a year's imprisonment for the crime of unpremeditated homicide. In addition, the Court sentenced one of the former officers to two years' imprisonment for the crime of wrongful deprivation of liberty and the other two to three months in prison for abuse of authority. By virtue of the sentence they were removed from their posts as officers of the OIJ for a period of five years and the State was sentenced to pay a fine of 5 million colons (US$ 16,181) to the mother of the deceased.

312. On the subject of police conduct, the Office of the Ombudsman has said that much still remains to be done regarding acts of discrimination by them. The fact that a large number of those with jobs in the police force are people with scarce resources, who have not completed their education and have not taken the relevant training or information courses, leads them to adopt cultural stereotypes in their work.

3. Political rights

313. According to article 19 of the Constitution, foreigners have the same individual and social rights and duties as Costa Ricans, with exceptions and limitations as the Constitution and the laws establish. They cannot intervene in the political affairs of the country and are subject to the jurisdiction of the courts.

314. The Constitution is clear on this point, as is constitutional jurisprudence in votes nos. 2093-93, 1440-92 and 4601-94 of the Constitutional Court which, in the last-named, stated the following: "The equality of foreigners and nationals declared by article 19 of the Constitution clearly refers to the nucleus of human rights in regard to which no distinctions can be admitted for any reason whatever and in no way for reasons of nationality. The Constitution reserves for nationals the exercise of political rights, because they are an inherent consequence of the exercise of the very sovereignty of the people."

315. The recent jurisprudence of the Constitutional Court, of 23 February 1999, expands on these ideas as follows:

> "The State is recognised as having the power to establish the migration policy of the country, that is, to determine the rules governing the entry of foreigners into the national territory and their residence there, whether temporary or permanent; that power must be exercised with absolute respect for constitutional principles and norms, so as to guarantee foreigners impartial treatment based on the dignity of the human person and with respect for fundamental rights."

316. The General Act on Migration and the Status of Aliens, for its part, in article 65 states the following:

> "Because foreigners do not enjoy political rights, they shall not be able to elect or to be elected to posts subject to popular vote, nor shall they be appointed to any other task or duty which confers civil or political authority or jurisdiction, nor join in associations to intervene in the politics of the Republic or take any part therein; nor shall they be able to exercise the right of petition in this class of activity."

317. In Costa Rica foreigners do not have political rights, only civil ones; thus they do not take part in the election of government officials, unless they have been naturalized and have observed the time periods prescribed by law.

318. In the same vein, the jurisprudence of the Constitutional Court, in vote no.01312-99 at 4.45 p.m. on 23 February 1999, referring to what was stated in decision no.06780-94 at 3.09 p.m. on 22 November 1994, regarding the definition of nationality and citizenship, makes the following comment:

> "Thus the doctrine considers nationality (a subject for domestic law, also covered by international law) to be a broader concept that includes citizenship (the purview of political law), so that all citizens are nationals, but not all nationals are citizens. For that reason, it is understood that, in addition to being a civil status, it is also a legal bond that connects or relates a person to civil society, whether it be the nation or a people, usually the one in which he was born or which he joins by naturalization. It consists in the fact of belonging to a community and reflects a sociological background which cannot be disregarded when determining a person's nationality under the law. In this relationship we find the sphere of civil relations. It is seen as a quality, a 'status' of an individual, granted by the State to which he belongs; in this regard, the quality of national comes to be an assumption of rights and duties by its owner. Nationality is, for that reason, a legal and political bond between a person and a given State. The term must be distinguished from that of citizenship, because the latter is like a 'species', while nationality is the 'genus' that includes that species; so nationality introduces us into civil society and citizenship into political society. Nationality is a juridico-political bond linking the individual to politically organized society, that is to say, the State, which is why its domain is that of political relations. It is a relationship now not of civil status but of political status, the result of birth (the principle of nationality by descent or by place of birth) or of other legal events or acts (choice or naturalization), which confers on one a political individuality with a given political capacity determined by the organization of the State (Constitution, electoral laws). In other words, that is the capacity to participate as an elector or as one who is elected, which includes the following rights: the right to vote, to be elected, to hold public office, to introduce draft laws, to make political petitions, to hold certain posts subject to popular vote or to carry out certain functions during elections (member of the board etc.), to hold political meetings, to associate for political purposes or to form political parties - the last-named rights not being synonymous with such public rights as the right of assembly or association. Citizenship includes a multiplicity of concepts: first that of a political bond between the State and the individual; at the same time that of a set of rights and duties that a physical person is entitled to in given circumstances; and it is also identified with the condition or quality from which flows the enjoyment of such rights. The most universally accepted tendency is towards according the enjoyment of those rights exclusively to nationals, whether by birth or by naturalization. Nationality in and of itself does not confer citizenship, for that there are certain requirements - a given age or other specific conditions for natives, and a certain number of years spent as a national for those who have been naturalized. Moreover, in certain legislations, such as ours, there is a limit set to the exercise of some political rights for naturalized citizens, as is the case with the right of election to certain public offices, as we shall see later. However, this capacity in no way constitutes the aforesaid status or legal

> position, nor can it be confused with it or with the competence for the enjoyment of political rights: these are rather effects of the status or condition of citizen, not of citizenship itself. The substance giving rise to this relationship is the bond which is established between citizen and State and which confers that quality of being a member of the latter, that is a constituent part of its sovereignty."

319. Finally, in regard to the right to take part in politics, it must be added that in order to prevent discrimination Costa Rica has drawn up the Rules for the Exercise of Voting Rights in Penitentiaries.

320. In contrast to migrants, Afro-Costa Ricans and indigenous people are nationals and as such are entitled to all the rights and duties of Costa Ricans. Although there is no type of restriction on their participation in politics, the major criticism the groups concerned have is that the political parties pay them very little attention, only thinking of them every four years at election time.

4. Other civil rights

i) Right to freedom of movement

321. There is no restriction on the right freely to move about the national territory; migrant workers and their families are free to leave Costa Rican territory as often as they wish. However, pursuant to articles 51 and 52 of the General Act on Migration and the Status of Aliens, if a resident remains outside the national territory for longer than a year or if a person who has settled temporarily stays away for more than six months, unless there are exceptional circumstances their status may be revoked.

322. Here we should highlight the fact that in November 2000 there were 19 foreigners in the cells of the Fifth Precinct in San José awaiting deportation because they were in the country without the necessary papers. Of them, 15 were Nicaraguan, 2 Honduran, 1 a Belizean and 1 Oriental.

323. During the administrative process of deportation, the Government has to pay for the basic services those persons require, such as food and health care. According to the view of the Constitutional Court, there are two forms of treatment involved: if the immigrant entered the country legally and thereafter overstayed the time allowed, the General Directorate on Migration is obliged to begin the required procedure and the immigrant cannot be held more than 24 hours. If, on the other hand, an immigrant is caught without papers and cannot prove that he entered legally, the Constitutional Court has approved a reasonable period of detention.

324. For geopolitical and economic reasons Costa Rica will continue to be a host country for migrants and so the authorities of the Ministry of Security are co-ordinating with other bodies the establishment of three temporary shelters (two in Guanacaste and one in San José) in which to hold illegal immigrants who are to be deported. These centres will be administered by the Government of Costa Rica, but with financing from international bodies.

ii) Right to own property

325. One of the issues that have caused the greatest argument is the right to own property in the indigenous territories. Act n° 13 of 1939, known as the General Act concerning Vacant Lands, was the first legislation to indicate precisely what the State should do in regard to the status of lands occupied by indigenous people, by declaring them inalienable. This position has been maintained in subsequent legislation; however, even today only a small percentage of the lands that belonged to indigenous territories are effectively owned by the communities.

326. On this subject, a study by researchers Marcos Guevara and Rubén Chacon in 1992 found that "the 22 indigenous reservations about which there is information together make up 320,650 hectares, or 6.3% of the national territory. However, according to conservative estimates, the indigenous population holds only 60% of that area, the rest having been invaded by migrant settlers and by large landholders over the years (the land controlled by indigenous people then really is only equivalent to 3.77%) [and] much of that area is steep mountainside or is thickly wooded".[42]

327. This is one of the most regrettable features of the situation and has been the subject of very many protests and claims by members of the indigenous communities. According to unofficial studies, to recover some 50,000 hectares of the lands of indigenous communities in Puntarenas, Turrialba and Talamanca would involve for the State a payment of some 30,000 million colons, a sum it does not have at present.[43]

328. For purposes of reference, the percentages of land area and the sums devoted by the State to the recovery of land in indigenous territories in the period 1983 to 1995 are as follows:

Territory	*Area (hectares)*	*Area recovered (hectares)*	*Amount (colons)*	*Percentage*
Bajo Chirripó	19,719	2,334	57,201,277	11.84
Chirripó	74,677	3,458	122,546,561	4.63
Talamanca Bribri	43,690	723	38,793,750	1.65
Zapatón	2,855	20	325,000	0.70
Arrojos	1,480	50	4,165,000	3.37
Conte Burica	11,910	610	49,392,026	5.12
Coto Brus	7,500	470	16,195,500	6.26
Guaymi de Osa	2,757	356	11,708,000	12.91
Guatuso	2,743	216	22,011,177	7.87
Nairi-Awari	5,038	126	2,515,000	2.50

Source: Selection of documents for use in the training workshop on indigenous legislation run for administrative officers working in the indigenous territories of Buenos Aires de Puntarenas, 25 October 2000.

329. In terms of the total over the period indicated above, one may say that of the approximately 250,000 hectares of indigenous territories there are in the country, about 8,363 hectares, or 3.34% of the total, have been recovered and for that a sum of about 324,853,291 colons has been spent.

330. The study by the Inter-Institutional Commission identified the following as the main problems concerning land ownership:

i) The effective ownership of land in the legally demarcated indigenous territories is precarious;

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[42] Marcos Guevara and Rubén Chacon, Territorios indios in Costa Rica: situacion actual y perspectivas (Indian territories in Costa Rica: present situation and prospects), San José, Garcia Hnos. S.A., 1992, p.12.

[43] "Indigenas denuncian a Gobierno" (Indigenous people denounce the Government), Al Dia, 13 October 2000.

ii) There are seven reservations not inscribed in the Property Register and for that reason the Association of Civil Engineers and Architects, with the backing of the Constitutional Court, objected to plans being registered if there had been no on-site measurement. The cost of such measurement was estimated by the International Development Association at between 850 million and 1,000 million colons (US$ 2,689 million and 3,164 million);

iii) There are constantly cases of invasion of indigenous territories by non-indigenous people, who even resort to violence, without any mediation or intervention on the part of the authorities;

iv) A significant number of persons who acquired the lands before they were declared indigenous reservations still live on them;

v) Illegal land-sales are another factor complicating the situation: they are sales without any legal justification;

vi) In no State institution is there any land-recovery programme. There are two aspects involved here: on the one hand there are the landowners who seized the land illegally after the reservations were set up and on the other there are the legitimate occupants of the land before the reservations were set up, for whom no programme of priorities has been established to pay for the land by means of improvements;

vii) In no institution does there exist any programme to prevent the continuance of this land-ownership situation.

331. It is important to point out in this regard that a study by the Centre of Juridical Research of the University of Costa Rica reached the conclusion that "The State of Costa Rica has never granted the funds stipulated in article 5 of the Indigenous Affairs Act for land recovery, nor have the competent bodies attempted any sustained territorial defence".[44]

332. The same study reveals that "in general terms, the administration has in certain cases conferred legitimacy on the violation of indigenous rights, while in others it has failed to discharge responsibilities imposed by law and in others again it has simply devoted its resources to other matters, which the Government says have higher priority. All this has happened despite the fact that there are legal provisions in force that were created to protect the interests of these peoples".[45]

333. At present the indigenous lands are threatened on various fronts: by the expansion of large agribusiness enterprises, by plans for mineral prospecting and mining, by the huge development of eco-tourism and, in the case of the Canton de Buenos Aires, by the construction of a giant dam to generate hydroelectric power in the valley of Rio Grande de Térraba.

334. In a recent ruling issued in response to a query from the National Directorate for Communal Development, the Attorney's Office for Agrarian Affairs stated the following: "This Office concludes that the organs of the State not only must ensure exclusive participation for the indigenous communities in

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[44] Rubén Chacon, Propuesta de talleres de capacitacion para funcionarios administrativos que realizan labores dentro de la jurisdicciones indigenas (Proposal for training workshops for administrative officers working in indigenous jurisdictions), July 2000.

[45] Ibid.

the organizations that govern them legally, but must also implement as soon as possible the measures indispensable for their sole and effective enjoyment of the lands within their reservations."[46]

335. Although ILO Convention n° 107 remained virtually unnoticed during its 33 years in force in Costa Rica (it was adopted in 1959 and superseded in 1982 by Convention n° 169), as a measure taking precedence over the law it did establish provisions in particular concerning indigenous lands.

336. By vote no.06229-99 of August 1999, the Constitutional Court accepted an application for amparo from the Maleku community claiming their traditional lands. One of the considerations states that "it may be alleged that there were at the time cases where the State failed to fulfil its obligations, which failures led to the loss of much land".[47]

337. The events that led to the application for amparo arose out of the enactment of a decree changing the boundaries of the indigenous reservation of Guatuso in the north of the country, boundaries that had been fixed by a previous decree. The Constitutional Court, as it began its analysis of the concept of indigenous property, concluded that "it must be borne in mind that what we have here is not simply the modification of one decree by another, but the violation of an international principle of human rights which, in accordance with article 43 of the Constitution, also ranks equal with the Constitution. Given that the above-mentioned Convention urged States to recognise the right of indigenous peoples to the lands they had traditionally occupied and that, in compliance therewith, the State of Costa Rica by Decree 5904-G and Act n° 6172 recognised a given area as the territory that the Maleku Indians had traditionally occupied, that then gave effect to the right contained in the Convention, which cannot be modified by decree, since that would imply a violation of the Convention itself".[48]

338. Lastly on this issue, one of the most striking things is the Court of Customary Law of the Indigenous Territory of Cabagra, the only court of its kind operating in the country.

339. That Court of Customary Law acts as an auxiliary and advisory body to the Governing Board of the Development Association in the trial of cases where those disputing a right are indigenous persons of the territory.

340. This court has customary law itself as its foundation. The Governing Board of the Indigenous Development Association of Cabagra is competent to resolve land disputes arising in the territory and is entitled likewise, in order to ensure due process, to appoint a body specifically to resolve this type of case, so that the Board can devote itself to administrative matters and only try cases on appeal.

341. An example of action by the court is case no.002-99, a complaint concerning usurpation of land in indigenous territory brought by Mr. H.O.O. (an indigenous person) against E.O.M. (also indigenous). The trial concerned usurpation and illegal sale of lands between two indigenous persons and, after setting forth their arguments, the three members of the court determined that the only person with a right to the lot in dispute was H.O.O. and therefore E.O.M. must evacuate the property within 15 days from the signing of the resolution. Otherwise, he would be removed by force. Since there was also a third person claiming a right in good faith, he was advised to take his case to court. Likewise, in case of opposition to

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[46] Office of the Attorney-General of the Republic, Communication C-045-2000, 9 March 2000, p.10.

[47] Constitutional Court, Resolution 06229-99, 2.50 p.m., 11 August 1999: application for amparo by ABR and others v. the President of the Republic and others.

[48] Ibid.

the resolution of the proceedings, a period of eight working days would be granted for appeal to the Governing Board.[49]

iii) Right to freedom of thought, conscience and religion

342. Pursuant to the provisions of articles 19, 29 and 75 of the Constitution, the rights of freedom of thought, conscience and religion are rights which may be exercised as freely by foreigners as by nationals, with the responsibilities imposed by law.

343. The Constitution in article 75 provides that "The Apostolic Roman Catholic religion is that of the State, which contributes to its maintenance, without impeding the free exercise in the Republic of other worship that is not opposed to universal morality or good customs."

344. The freedom to profess, practise and teach one's religious rites and beliefs, whether individually or collectively, in public or in private places, is for migrants as for nationals only limited by the proviso that that worship be "not opposed to universal morality or good customs". On this point the Constitutional Court has explained that "article 75 of our Constitution guarantees freedom of worship, but that activity cannot be carried on as freely as the group concerned finds convenient, without any restriction. That is so because the members of a religious group do not have the right to render the environment insupportable for the rest of the community who are not involved in the activity, since the interests of the latter must also be protected" (Constitutional Court vote no.1040-90).

345. In regard to freedom of worship as practised in the country, the Office of the Ombudsman has received some accusations of religious intolerance, for example from religious groups or members of groups who have been subjected to unequal treatment before the law by reason of their religious beliefs, who are persecuted for their beliefs or for whom the profession of their faith is rendered difficult.

346. The Ombudsman's view is that the right of assembly for religious purposes is not uniformly recognised. In November 2000 it took up a complaint lodged by some Christian churches against the municipality of San José, which had not given its authorization for a Bible-reading in the Boulevard de San José, as not being a cultural event.[50]

iv) Freedom of opinion and expression

347. Article 29 of the Constitution provides that "Everyone may communicate his thoughts by word of mouth or in writing and publish them without previous censorship; but they shall be responsible for abuses committed in the exercise of this right, in such cases and in the manner established by law". Article 75 states that "The Apostolic Catholic religion is that of the State, which contributes to its maintenance, without impeding the free exercise in the Republic of other worship that is not opposed to universal morality or good customs".

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[49] Court of Customary Law of the Indigenous Territory of Cabagra, Resolution 01-2000, 10 a.m., 17 August 2000: complaint concerning usurpation of land in indigenous territory brought by H.O.O. (indigenous) against E.O.M. (indigenous), case no.002-99.

[50] Office of the Ombudsman, Communication PE-407-2000, 30 October 2000, p.16.

B. Economic, social and cultural rights

1. The right to work

i) Migrants' right to work

a) Legal framework

348. Costa Rican law contains several provisions regulating the right to work, in particular where migrant workers are concerned, without establishing any distinction. The Constitution, as the supreme law, provides in article 56 that "Labour is a right of the individual and an obligation to society. The State should endeavour to see that everyone has lawful and useful employment, duly remunerated, and to prevent the establishment on that account of conditions which may in any way curtail a man's freedom or dignity or degrade his labour to the status of mere merchandise. The State guarantees the right to free choice of work."

349. Article 68 of the same instrument provides that "No discrimination shall be made in regard to wages, advantages or working conditions, as between Costa Ricans and foreigners, or with respect to any group of workers." The only exception provided in the article is that under equal conditions, preference shall be given to national workers.

350. By vote no.616-99, the Constitutional Court annulled the effect of article 13 of the Labour Code, which limited the percentage of foreign workers in the workplace, since it stipulated that any employer had to employ at least 90% of Costa Rican workers in his business.

351. Among ILO Conventions concerning migrants, Costa Rica has, by Act n° 2848 of 26 October 1961, ratified Convention n° 111 of 1958 on discrimination in employment and occupation and, by Act n° 3636 of 16 December 1965, Convention n° 117 concerning the basic aims and standards of social policy, the improvement of living standards – with provisions relating to migrant workers – the remuneration of workers and related issues, without discrimination as to race, colour, sex, creed, association with a tribe or membership of a trade union.

352. The General Act on Migration and the Status of Aliens of 13 August 1987 and its Regulation of 31 May 1989 stated the following in that connection:

> "Article 70. Aliens who reside permanently or live temporarily in the country and who are allowed to work according to their category or subcategory of income and length of stay shall enjoy the protection of the relevant labour and social laws.
>
> "Article 71. Aliens admitted or authorized as permanent residents may engage in any paid or gainful work or activity on their own account or that of a third party, in accordance with their income category, the laws governing the exercise of the activity and the provisions of the present Act and the regulations thereto.
>
> "Article 72. Aliens admitted or authorized as temporary residents may, subject to the exceptions established by the regulations to this Act, engage in wage-earning or gainful activities for their own account or that of a third party only during the period of their legal stay and in such activities as are authorized by the General Department, subject to approval by the Ministry of Labour and Social Security.
>
> "Article 73. Aliens admitted as non-residents may not engage in gainful work or activities for their own account or that of a third party, with the exception of artists, sportsmen, entertainers and

> migrant workers, in accordance with the authorization granted by the General Department, subject to approval by the Ministry of Labour and Social Security.
>
> "Article 75. Aliens residing illegally in the country may not work or engage in wage-earning or gainful activities for their own account or that of a third party."

353. An inter-institutional commission is at present drafting a new general act on migration and the status of aliens to replace the present one; a draft is also being prepared defining the crime of the traffic in persons which is to be incorporated in the new draft criminal code which awaits approval in the plenary Legislative Assembly.

354. In 1995 Act n° 7476 on Sexual Harassment in Employment and Education was adopted. This law obliges employers to adopt an internal policy to prevent, discourage, avert and punish unsolicited sexual conduct. To that end, all employers must communicate in writing and orally to supervisors, representatives, employees and clients the anti-harassment policies in force in the enterprise. Employers must also establish an internal procedure for dealing with complaints of such conduct, which must be resolved within three months of the complaint.

355. The Act stipulates that, if the employer does not comply with these provisions, the employees may complain to the Labour Inspection Office of the Ministry of Labour and Social Security, so that the latter may begin the relevant administrative procedures or, failing that, they may report the situation to the Office of the Ombudsman.

356. This law establishes a simple procedure for any employee subjected to sexual harassment. In such a case, the first thing he or she has to do is to report it in accordance with the internal procedure established in the enterprise. If after three months the situation has not been resolved or if the solution is not the right one, the employee may resort to the labour courts to uphold his or her rights. The accusation in this case must be made within three months of the last incident of harassment.

357. The relevant regulations to ensure full application of this law are awaiting approval.

358. To deal with the complicated problems of Nicaraguan migrants, the Government of Costa Rica has signed several bilateral agreements with the Government of Nicaragua regarding the migrant labour force. The Convention on the Migrant Labour Force, signed in 1993, regulates the admission, entry, stay and departure from Costa Rican territory of Nicaraguan migrant workers who wish, temporarily and as non-residents, to engage in agricultural activities, in particular the seasonal coffee and sugar-cane harvests. There are also several agreements signed by the Ministers at the meetings of the Costa Rican and Nicaraguan Bi-national Commission on security and migration, the economy and trade, co-operation, development and the migrant labour force.

b) Profile of the labour force

359. According to figures from the 1998 Multi-Purpose Household Survey by the Costa Rican Ministry for the Economy, Industry and Trade, out of the total number of migrants, 51% are women and of that percentage 52% are Nicaraguan. It is well known that they are concentrated in the services sector, where 56.9% of Nicaraguan women are to be found. This is virtually twice the number of Costa Rican women (30.9%) working in that sector. Following that in order of numbers, Nicaraguan nationals represent 16.1% of migrants in trade, 9.2% in administration and 8.5% in industry. The services sector includes not only domestic service but also in general those occupations whose purpose is to offer services to individuals and institutions in the area of security, food-preparation in restaurants and hotels, cleaning, washing and ironing, letting of lodgings etc.

360. Together with the characteristics indicated above, the distribution of Nicaraguan workers by sector of economic activity shows a large proportion working in agriculture (although the numbers are similar to those of nationals), in construction (where the percentage is greater than that of nationals), in trade and in personal services, for instance as security guards or cleaning and taking care of cars. Another aspect of the survey to be highlighted is that there is a greater concentration of Nicaraguan women in a single type of activity, since the tertiary sector occupies 84.5% of the total, which is more than the 76.1% of Costa Rican women. Within this particular area the most important branches are trade, with 30.9%, and personal, social and communal services, with 52.1%.

361. The report on the state of the nation for the year 2000 says that there is a marked concentration of women in the services sector: 61.6% of Nicaraguan women fall into this category, which is twice the percentage of Costa Rican women. According to the figures from the Household Survey, one in three domestic workers in urban areas is Nicaraguan.

362. With regard to age, among males it is those between the ages of 20 and 29 who predominate, representing 40.6%, whereas among women the percentage is highest between 30 and 39 years and between 40 and 49 years, which is probably due to the type of job they do.[51]

363. This profile shows that the situation of the Nicaraguan migrant population supports the argument that the immigration of workers is having an impact through a gradual process of social segmentation of the Costa Rican labour market, reinforced by cultural patterns, that may be leading to a stratification of the work force according to the jobs regularly held by this population, their migrant status and their grade or level of education.[52]

364. At present the task of regulating the situation and issuing work permits to migrants is incumbent on the General Directorate of Migration and Aliens, as has been the case since vote no.616-99 of the Constitutional Court. However, as has been said, since the programme has been suspended, no new permits are being issued.

365. It is important to point out that, since that vote in the Constitutional Court, the Ministry of Labour has closed the migrant labour office that issued work permits and insisted that that is now the job of the General Directorate of Migration.

366. Migrant workers, particularly those of Nicaraguan and Panamanian nationality, also offer their services for the melon, orange and bean harvests and in construction, as carpenter's assistants, bricklayers and labourers.

367. These immigrant workers supply a significant contingent to the labour force that many firms, skirting the local labour laws, draw on to reduce their labour costs and thereby meet the demands of competition from external markets. This practice is condemned by the Government of the Republic, as will be explained in detail later.

368. In view of the particular nature of the job, the General Directorate of Migration has removed the restrictions on the employment of migrant domestic workers, provided they fulfil the legal requirements. Since 2 February 1998, the sum required as a guarantee on entering the country has been reduced from US$ 100 to US$ 20.

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[51] State of the Nation project, Estado de la Nacion en Desarrollo Humano Sostenible 2000 (State of the nation in sustainable human development 2000), p.115.

[52] FLACSO and IOM, op. cit., p.7.

369. In contrast to Nicaraguans, other groups among the migrant population are highly concentrated in jobs that are better placed on the employment ladder, such as professionals, managers and administrators (28.4%, as compared to 10.5% of Nicaraguan migrants).

370. The health profile of migrants shows, in the case of males, pathologies related to the work they perform. This can be seen from the employment insurance figures of the National Insurance Institute's Industrial Risks Department, which show that during 1999 the age of the migrant population treated ranged from 15 to 49 years, the health profile in the case of males showing work-related pathologies. In that year 21,451 men without work permits and 170 of Nicaraguan origin with permits were reported to have had accidents. In the case of women, the most frequent reasons for seeing a doctor are related to reproductive health, which indicates an absence of family planning methods.[53]

371. On another aspect, article 134 of the General Act on Migration and the Status of Aliens regulates the question of private agencies or individuals who recruit migrant workers. The article reads as follows: "The recruitment of unauthorized immigrants in the national territory is expressly forbidden by the competent national authorities, as is the establishment of any kind of private emigration agency or entity negotiating with such or the issuance of any propaganda or publicity soliciting national manpower to work abroad without the requisite authorization."

372. Unfortunately, the economic situation in Nicaragua has generated an illegal traffic in migrant workers. This illegal traffic in the direction of Costa Rica is carried on by persons on the fringes of the law who, evading immigration controls, assist immigrants to cross the northern border in exchange for payment.

373. The Criminal Code does not specifically deal with the crime of illegal trafficking in migrant workers; however, that code does, in article 372, regulate what are known as international crimes, as follows:

> "Those who head or take part in international organizations dedicated to trafficking in slaves, women or children or narcotic drugs, commit acts of terrorism or violate the provisions of treaties signed by Costa Rica to protect human rights shall be liable to 10 to 15 years' imprisonment."

374. Clearly the absence of a legal provision regarding illegal traffic in migrant workers leaves without defence hundreds of men, women and children who leave their country to seek a better future. Faced with this lacuna in the law, the General Directorate of Migration prepared a draft law that was tabled in December 2000 to define the activity, regulate the recruitment of foreigners, impose severer penalties on employers who violate the labour rights of their workers, establish controls and penalties for firms that transport people overland illegally and create labour classifications such as those of workers who repeatedly cross the border to work at permanent jobs and those who do so only seasonally.

c) Access and working conditions

375. One of the aspects of the situation since the migrant amnesty of most relevance here has been the concern of the migration authorities and the Costa Rican police to step up their operations to prevent more illegal immigrants entering the country. The chief emphasis has been on monitoring those employers who recruit foreign workers to check that they obey the labour laws.

376. In 1999 Costa Rica returned 42,000 undocumented persons to Nicaragua, most of them having been turned back and some deported.

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[53] Office of the Ombudsman, op.cit.

377. Nicaraguan Central Bank data show that in 1998 remittances from Costa Rica totalled 59,000 million colons (some US$ 200 million), whereas in 1999 that sum was estimated to have increased by 44% to 84,600 million colons.[54]

378. According to the National Multi-Purpose Household Survey carried out in 1997 by the Ministry of Labour and Social Security, immigrants of Nicaraguan origin were receiving an average salary of 53,984.10 colons per month (US$ 175). There are no data on non-Nicaraguan immigrants nor any break-down into legal and illegal immigrants.

d) Labour inspection mechanisms

379. The fact that the great majority of adolescent migrants lack regular migrant status is largely the result of their ignorance of their rights. Because of that they acquire the habits of persecuted people and adopt a voluntarily repressed attitude. They nurture rumours and fears of persecution at the hands of the immigration authorities and never leave their work unless it is strictly necessary

380. The fact that their rights have been violated in their own country and that they have been the direct or indirect victims of aggression because of their ethnic origin, gender or nationality are factors increasing their tendency to act like persecuted people. To that, lastly, must be added their fear of police prosecution and the economic loss that an abrupt expulsion from the country would entail for them. For all those reasons they live confined to the hostels where they work, because they see them as a refuge and a protection.

381. The participation of illegal migrant workers in the labour market has produced a singular situation. Today a large portion of the productive sector depends in good measure on the contribution of Nicaraguan immigrants. Personal services, private security and domestic employment function thanks to the fact that they are performed by thousands of Nicaraguan workers.

382. Transnational sectors of the economy, in particular agricultural exports, construction and professional services, owe their dynamism largely to the availability of a supernumerary contingent of, mainly illegal, immigrant manpower, which allows local employers and transnational firms to maintain general conditions of insecurity in employment. This not only leads to unemployment for the national labour force but also weakens the social security regime, since contributions to it can be avoided thanks to the massive influx of new illegal workers, thus jeopardizing the Costa Rican social system.

383. On the subject of the problems of migrant workers, the Office of the Ombudsman in its report for the year 2000 says that " unscrupulous employers who take advantage of cheap manpower, workers who cannot make claims because they are in an illegal situation, are fortified in their violation of labour rights by the timidity and insufficiency of the intervention by the Ministry of Labour and Social Security. The lack of resources, the absence of mechanisms for effective interagency co-ordination and the need for a national employment policy are factors enhancing the vulnerability of that population."[55]

384. State action has been aimed at devising mechanisms to guarantee compliance with and monitoring of all the rights and duties of workers. The mechanisms that Costa Rica has established to check up on and correct irregularities in employment are the work inspections carried out by the 27 inspection units of the Ministry of Labour and the inspections performed by the General Directorate of Migration pursuant

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[54] "Exodo de 400.000" (Exodus of 400,000), La Nacion, Sunday 12 December 1999, "El Pais" section, p.22.

[55] Office of the Ombudsman, communication 407-2000 of 30 October 2000, p.16.

to article 97 of the General Act on Migration and the Status of Aliens in immigrants' work places and hostels.

385. The working conditions in the Inspection Office of the Ministry of Labour have been criticised by the Office of the Ombudsman, which has said that "it is important to stress that the situation in the Labour Inspection Office is disturbing. The reason is that in the majority of cases resources are insufficient for the work to be done: there is a shortage of staff and funds to carry out inspections, they have no vehicles, nor money for per diem payments, offices etc. and they are obliged to beg assistance from other government offices".[56]

386. The General Act on Migration in article 96 sets a penalty of 100 to 200 days' fine for any person, physical or moral, public or private, who provides work or lodging to foreigners residing illegally in the country or even to those legally resident there if they are not entitled to perform the activities concerned.

387. The Ministry of Labour has also implemented other policies to make labour relations more transparent. For example, between January 1995 and April 1998 it set up the programme of seasonal work permits, which authorized Nicaraguan workers to stay in the country to work in agriculture, construction or domestic employment for a specific time.

388. When the latest decree on the migrant amnesty entered into force, the issuance of new permits was suspended, but those that have expired are being renewed. A campaign was also launched in the media (radio, television and the press) to publicize the rights of immigrants in order to inform the population.

389. The International Organization for Migration (IOM) launched this campaign in the media to make known the rights of immigrants so that the public would be informed of them.

390. The purpose of the campaign had two facets: first an effort was made to regulate the influence of the public, mainly at the central office for the reception of documents in the capital, and to counter the distorted information that was circulating; secondly, the aim was to maintain the flow of information in the media and in informal means of communication, as well as to encourage legal immigration by Central Americans.

391. The campaign had five components: radio advertising over rural and national channels; a press conference to introduce the amnesty decree and the accompanying regulations, with the participation of government officials and diplomats accredited to Costa Rica; notices in the national and rural press; the production and distribution of printed material, for example pamphlets, leaflets and posters; and 30-second advertisements during the main national radio and television news bulletins.

392. In monetary terms, the campaign cost US$ 232,202.

e) Female domestic workers

393. This group represents one of the most important sectors that incorporates immigrant labour. Although the Ministry of Labour does not know how many active domestic workers there are, since many women engage in that activity sporadically or do not register as domestics, it is estimated that between 70 and 75% of domestics in the country are Nicaraguan (data supplied by the Association ASTRADOMES in June 2000).

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[56] Ibid.

394. The situation of the Nicaraguans is peculiar. Many come to Costa Rica seeking new horizons and, in very occasional and exceptional cases, some even work without being paid, just for board and lodging. They accept these conditions as a springboard allowing them later to travel to the capital, San José, to regularize their migrant situation, aiming to ensure for themselves a better job in the future. They see this work as transitional and in this way they also escape the immigration authorities.

395. Domestic employment as such is poorly paid work held in low social esteem and it is difficult for domestic workers to exercise their labour rights. These difficulties increase perceptibly in the case of foreign workers, a large number of whom have no papers. Often, even when the workers know their rights, they do not claim them for fear of finding themselves without work; in other cases, employers are tempted to use the workers' lack of papers to pressure them into giving way on their rights.

396. In view of this situation, the immigration authorities are hoping that the latest amnesty decree will have helped to solve the problem by highlighting employers' duties and making people aware of employers' obligations towards their domestic employees.

f) Labour organizations

The Association of Domestic Workers

397. The Association of Domestic Workers (ASTRADOMES) was created in 1990, taking its place among those defending women who work in the home and especially protecting the exercise of their labour and health rights and ensuring them decent working conditions.

398. Starting from that premise, ASTRADOMES decided to include foreign women in its target population, since it is they, especially Nicaraguan women, who most often request the services and advice of the Association.

399. The Association has set up joint projects with the National Institute for Women, with which it has run workshops and national forums, such as the one entitled "Situation of domestic workers in Costa Rica", among whose participants were the Office of the Ombudsman, the Director of the Office of Migration and the Status of Aliens, a representative of the Ministry of Labour and a representative of ASTRADOMES and of the National Institute for Women. It has also held training workshops, attended by a large number of domestic workers, in the home that ASTRADOMES operates and in the branch office in the town of San Carlos.

400. ASTRADOMES works in direct co-ordination with the Inspection Department of the Costa Rican Social Security Fund, which has an inspector designated specifically to deal with cases of domestic workers. Through that department, ASTRADOMES brings specific claims against employers who violate the rights of these women and follows up the cases that are due for collection and judicial action.

401. With the Industrial Risks Department of the National Insurance Institute (INS), it is working to make employers aware of the need to pay the risk insurance for work in the home for their domestic workers. As part of this co-operation, an announcement was prepared for television and another for the press, as well as an information folder, and INS was provided with a list of the telephone numbers of those employing members of the Association, so that the Institute could carry out inspections and could insure workers wherever they were not insured with the INS.

402. With the Inspection Department of the Ministry of Labour and Social Security it co-ordinates the monitoring and inspection of all reported cases of exploitation of domestic workers in the work place.

403. With the University of Costa Rica the Association has set up a series of study and training workshops. These seminars aim to publicize the work of human rights organizations among the university faculty. Workshops and talks have also been given to students of law, social work, psychology, administration and educational sciences from other universities.

404. In addition there has been co-ordination to enable specialists from the Interdisciplinary Programme on Gender Studies (PRIEG) to run workshops for domestic workers.

405. Other projects that have been executed include joint action co-ordinated with the Women's Secretariat of the Sandinist Female Employees' Labour Union of Nicaragua to inform unionized Nicaraguan female domestic workers of the situation they will face if they come to work in Costa Rica.

406. ASTRADOMES has set up a temporary shelter where women who so request can stay for from 8 to 15 days according to circumstances. Food and lodging is provided the women in the shelter while they move from one job to another. During their stay the domestic workers are given the legal and social guidance they need, so as to help them to get over the crisis and begin the process of self-help.

407. Costa Rican law prohibits the establishment of work placement agencies and stipulates that the sole body that can place persons in employment is the Ministry of Labour and Social Security. At present there is a list of some domestic workers looking for employment, since occasionally employers call ASTRADOMES seeking the services of a domestic employee. In such a case, the women are given counselling, but the Association does not intervene in the recruitment process.

408. The Association also has a telephone advice service which provides information about such matters as calculating labour rights, where to go to lodge a complaint, official holidays and the like. This information is given to the domestic workers and to their employers.

409. The Association has co-ordinated a series of workshops in San José, in San Carlos in the north, in Limon on the Atlantic and in Alajuela in the centre of the country. The subjects dealt with in these workshops were: "Enhancing our self-esteem", "Violence and sexual harassment of female workers", "How we women work", "Our female leadership", "Our rights as human beings", "Our labour rights" and "What we are seeking and how to organize ourselves in ASTRADOMES". Female workers who have suffered physical, verbal or psychological aggression receive personalized attention after the workshop.

410. Social and legal advice is perhaps what is most sought from the Association. This service is geared to informing women about their rights and the procedures they must follow to defend them.

411. The particular nature of domestic work is very clearly laid down in articles 101 and following of the Labour Code. Article 104 expressly states in paragraph c) that "they shall be subject to a regular working day of a maximum of 12 hours, with the right to a break of at least one hour during that period, which may coincide with the times set aside for meals".

412. In 1991, ASTRADOMES filed an application on grounds of unconstitutionality before the Constitutional Court of the Supreme Court of Justice regarding article 104 of the Labour Code, because it considered that it was discriminatory in recognising fewer rights for domestic workers than for the rest of the country's workers. However, the application was rejected, since the Court considered that this was a special case differing from that of agricultural or commercial work.

413. In the period 1994-1995, a draft revision of the article quoted was introduced in the Legislative Assembly reducing the working day to nine hours, including an hour's break which could be accumulated during the first five days of the week, thus producing an exceptional four-hour day. The

draft was vetoed in due course by the President of the Republic because, among other things, it set the minimum age for work at 13 years, in contravention of the International Convention on the Rights of the Child and the Code on Children and Adolescents.

414. In view of that situation, the Association together with the Ministry of Labour, the Office of the Ombudsman for Women and the National Institute for Women introduced a new draft revision of article 104 of the Labour Code to bring the domestic workers' working day into line with that of other employees. That draft has already been approved by the Social Affairs Committee of Congress and is now to be taken up by the plenary of the legislature.

415. In attending to the public, social workers most often have to deal with problems of sexual harassment by employers, sexual aggression, alimony difficulties and rape of the domestic workers' daughters by the employers.

The Association of United Nicaraguan Workers (ATNU)

416. In 1995 was established the Association of United Nicaraguan Workers (ATNU), a non-profit organization, without political or religious ideology, set up with the aim of providing a service to Nicaraguan workers in Costa Rica.

417. This Association arose out of a protest by workers on the banana plantation of Geest Caribbean American Ltd. alleging violations of the rights of workers in that company in 1994. The Association was organized with the help of the Costa Rican Lutheran Church and the Industrial Union of the Agricultural, Stockbreeding and Associated Workers of Heredia (SITAGAH) and now has about 600 workers of Nicaraguan nationality as its members.

418. The Association mainly operates in the banana-producing region to the north of the country, in the central Pacific region, with workers in construction and services, and in the urban areas around the capital.

419. Action by the Association has concerned the following issues: it has dealt with complaints of the violation of trade-union rights, although the exact number of complaints is not known. The Ministry of Labour carries out periodic inspections and considers workers' complaints, which are, when appropriate, referred to the Attorney-General's Office.

420. Moreover, during the latest migrant amnesty, the Association together with SITAGAH worked to publicize the procedures for legalizing one's migrant status, putting out flyers and posters and running training workshops such as those held in April 1998 on the banana plantations of the Sarapiquí region in the north of the country, which dealt with the issue of migration procedures, and that on 27 June 1998, entitled "Organization of migrants and their rights". Recently, in consultation with the IOM, it has held workshops to sensitize the Costa Rican population about discriminatory practices against Nicaraguan migrants, with a view to eradicating such practices.

ii) Afro-Costa Rican employment situation

421. Representatives of the Afro-Costa Rican population point to the low numbers of black workers in government institutions, even at the local level in communities with a predominantly black population, as one of their chief labour problems. In this regard, they criticise the fact that positions of leadership and prestige, which are the best paid, are usually in the hands of the white mixed-race population of the Central Valley.

422. Thus, in spite of the efforts of several organizations in the civil society to promote equality of opportunity for the different ethnic groups and to ensure that there is a body of law that prohibits all forms of discrimination, the public administration is still far from adopting policies that would lead to greater equity in access to jobs.

423. It is interesting to note that a study has shown that on many occasions the social justification given is that "there are few Afro-Costa Rican civil servants because they do not come looking for jobs in the municipalities or they find opportunities elsewhere". In other words, the blame is laid on the victims for their own exclusion.

424. When a situation is detected where Afro-Costa Ricans are at a disadvantage for recruitment, there is an urgent "need to take practical affirmative action in Costa Rica which makes provision for ethnic policies to close this unfair gap".

425. The situation of Afro-Costa Rican women is also characterized by a lack of policies and initiatives that would take account of the threefold discrimination against them: because they are black, because they are women and, for a large number of them, because they belong to an impoverished and marginalized social class.

426. Official programmes also fail to consider the need to include female heads of household in the economically active population and ensure that they can do their work of caring for and raising their children in conditions that make it easier to perpetuate the fundamental social values of the Afro-Costa Rican population.

427. The main obstacles to the advancement of Afro-Costa Rican women are low levels of education and poor preparation for employment. Their education is limited and so, consequently, are their employment opportunities. The main sectors where they work are tourism, education, canning and bottling, restaurant and shop sales, lottery agencies, beauty salons and bakeries. Afro-Costa Rican women with professional qualifications have few opportunities to work in the provinces and generally emigrate to the capital, San José.

428. In view of these variables, it is also important to consider increasing black women's opportunities to participate in organizations devoted to social and cultural activism, so as to preserve their traditional contribution to the development of the community and overcoming its difficulties.[57]

iii) Indigenous employment situation

429. Many indigenous communities have very special ways of joining together for work through a system of borrowing and lending manpower that facilitates their economic independence. Other kinds of association work along family lines and are an effective means of production.

430. The National Apprenticeship Institute, an autonomous body whose task is to train workers, has carried out training programmes for the indigenous population who receive that training in the different regional units established in areas where indigenous peoples are active.

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[57] See Duncan and Allen, op. cit., p.67.

431. In 1999 the following projects were carried out:

Area	*Regional Unit*	*Population*	*Course*
San Carlos	Huetar Norte	Palenke Margarita Group Malekus Group	Crafts Courses of interest to them
Talamanca - Limón	Huetar Atlántica	Indigenous groups of Talamanca canton	- Banana growing - Basic business Administration - Agriculture and livestock-raising techniques - Organic farming - Pest control - Post-harvest management
Perez Zeledón	Brunca	Indigenous groups of Boruca, Térraba, La Sabana, La Puna, Santa Eudoviges Aradikes	- Coffee production - Coffee growing - Women's dress-making - School uniform tailoring - Organic fertilizers - Accountancy for rural organizations - Food handling - Office management techniques - Document administration
Puriscal and Mora	Central and Eastern	Quitirrisí de Mora indigenous reservation Grano de Oro, el Quetzal reservation Simiriñac and Paso Canoas indigenous reservations	- Cutting out and assembling (clothes) - Tailoring - Make-up and hairdressing - Cabinet-making - Computer operation - Coffee growing - Market-gardening - Maize growing - Point-of-sale consultancy

Source: Memorandum for the report of Costa Rica to the ILO, 1999.

432. Since 1985 a theoretical and practical project has been under way in the region of Talamanca for the training of the indigenous peoples of the canton of Limon. This project, which began as a plant nursery in the Gandoca community, in the canton of Sixaola, where fruit trees and timber-yielding trees were planted, is now a training centre for some 600 inhabitants of the Alta Talamanca area.

433. The members of this community have had training in administration and production and have received loans for poultry farming and tilapia (fish) breeding. In some cases good results can already be seen, for instance in the community of San Rafael de Bordon, in Cahuita, where the inhabitants began their work with a loan of 200,000 colons and today have a business with an investment of several million colons.

434. The project is continuing thanks to the contributions of various non-governmental organizations, although the idea is that in the future the centre should be able to sustain and manage itself by offering paid hospitality. For that purpose, rented accommodation with meals included is already being offered to state entities such as the Ministry of Agriculture and Stockbreeding, the Costa Rican Social Security Fund, the Agrarian Development Institute and several universities, to allow them to hold seminars and other events.

435. The estate has an inn, a kitchen, a workshop and six computers. The total area is 18 hectares, of which 11 are under cultivation and 7 are secondary forest. All the centre's facilities have been built by the students themselves, after prior training in woodwork and carpentry.

436. Recently new courses have been started for tourist guides, learning English, restaurant service and tourism micro-enterprises.

437. In some regions, such as the south, seasonal migration for work in agribusiness is the custom, whereas in the Ngöbe and Buenos Aires regions permanent salaried work is the rule.

438. One experiment that produced interesting results was to make a tractor available to the Guatuso community, which enabled them, even if only partially, to become independent of intermediaries for mechanized farming.

439. One of the sectors where State support is most necessary is the marketing of agricultural produce. Local producers are generally highly dependent on middlemen, even in regions such as Talamanca which has the highest production and best quality of bananas.

440.. Another interesting production project is an agribusiness one in the Talamanca area, where four Bribri and Cabecar producer organizations, in co-ordination with the Ministry of Agriculture and Stockbreeding and the National Production Board, are promoting organic banana production.

441. In spite of the development of these initiatives, it is perhaps indigenous women who suffer the most work-related problems. The conclusions of the Inter-Ministerial Commission set up by the President of the Republic on this issue identified as a serious problem the lack of paid work and opportunities to generate income for women, both young and adult. There is also a lack of work-related infrastructure and of production support.

442. As a possible option in the employment field, the Commission suggested developing organizational capacity through the environmental project for the sale of environmental services. Likewise, the possibility is being considered of reinforcing production projects in crafts (handbags, dresses, glass beads, manufacture of dyes, hats, baskets), pig farming, composting and the cultivation of forest plants; and promoting training workshops on such subjects as how production functions, sewing, life projects, self-esteem and strengthening micro-enterprises.

443. Another possible solution envisaged by the Commission is to extend the First Lady's programme "Creating opportunities" to the indigenous regions. This programme consists in creating opportunities for the personal and social reinforcement of adolescent and child mothers and improving their quality of life by comprehensive care.

444. One of the characteristics of indigenous communities is the early age at which single adolescents become mothers. This involves serious problems for girls who have to face a difficult personal and economic situation made worse by the already straitened circumstances of their family environment. In this context, the programme "Creating opportunities" fosters information-sharing, supports the adolescent and child mothers by encouraging their participation, publicizes and promotes their rights, offers training by technical and professional staff, organizes the supply of a whole range of services and creates a system of information and follow-up on actions and achievements.

2. Right to form trade unions

445. According to article 60 of the Constitution, "both employers and workers may organize freely, for the exclusive purpose of obtaining and preserving economic, social or occupational benefits. Foreigners are prohibited from exercising direction or authority in unions."

446. From that text it is clear that foreigners may take part in trade-union organizations, but may not take posts of leadership. This provision is based on the need to safeguard the purposes and nature of trade unions and prevent them being distorted to serve interests alien to those of the nation.

447. To date there is no record of any unions composed entirely of indigenous persons. It is essential to realise that the basic organizations among indigenous peoples are the indigenous development associations, which are of different kinds.

3. Right to housing

448. The social scheme that takes care of housing is the National System for Housing Finance, which comprises the Housing Mortgage Bank, the Ministry of Housing and Human Settlements and the National Institute for Housing and Urban Development, as well as a group of public and private bodies which, as authorized entities, execute various programmes.

449. The system operates without regard for political, racial or any other kind of consideration, avoiding unequal treatment of the different applicants by virtue of their affiliation with a particular party, their gender, age, ethnic group or any other characteristic that is not strictly sociological.

450. It should be stressed that the application form for a family housing subsidy or any other benefit does not request any information about race, colour or ethnic or national origin. The base indicator is level of income, weighted in favour of those who have less.

451. The Ministry of Housing and Human Settlements, as the guiding entity in the National Housing System, has no record of any complaint of discriminatory treatment by the institutions of the System. The absence of complaints implies as a consequence that there are no resolutions, case-law or administrative measures about the correction of abuses and the System is viewed in its totality as a set of mechanisms and institutions that respect the principle of constitutional equality contained in article 33 of the Constitution.

452. In the case of minority groups such as the Afro-Costa Ricans or the Chinese, few studies have been done on the characteristics of their housing. In general, their degree of acculturation causes them to live in housing of a western type and they have access to the national housing credit systems just like any other nationals.

i) Housing for migrants

453. The problems of housing availability are reflected in the increase in poor housing in the different regions of the country. According to figures from the Ministry of Housing and Human Settlements there are nation-wide 302 substandard settlements in which live 33,095 families, 42.29% of whom are foreigners.

454. The data on foreign families living in substandard housing is broken down in the following table:

Province	*Substandard housing by province*	*Foreign families living in sub-standard housing*	*Foreigners living in sub-standard housing*	*Percentage of general total*
San José	104	8.432	42.159	25,48
Alajuela	47	1.271	5.357	3,84
Cartago	32	940	4.698	2,84
Heredia	27	1.091	5.456	3,30
Guanacaste	26	494	2.472	1,49
Puntarenas	42	1.138	5.688	3,44
Limón	24	629	3.143	1,90
Total	302	13.994	69.971	42,29

Source: Ministry of Housing.

455. A parallel study carried out by the Latin American Faculty of Social Sciences (FLACSO) in 1997 revealed the fact that Nicaraguan immigrants represent 47% in La Carpio, 15% in the southern districts of San José and 8% in Rincon Grande de Pavas west of the capital. That would make a total of 14,500 Nicaraguans living in three of the main substandard housing settlements in the metropolitan area.[58]

456. To resolve these problems and to comply with the provisions of article 19 of the Constitution and article 6 of the rules for the operation of the National Housing System, the Ministry of Housing provides information to foreigners about obtaining housing subsidies, since they may obtain the benefit of a subsidy if their migrant status and their family circumstances and employment call for it.

457. Moreover, as indicated in the report of the Office of the Ombudsman for the year 2000, the Ministry of Housing has reported that in the Housing Mortgage Bank's 13 years of existence a large number of subsidies have been approved and paid out (1,713 cases, representing an investment of 1,314 million colons) to non-national heads of household whose migrant status had been duly legalized.[59]

458. In this regard, the fact that the Family Allowances Act stipulates that it is Costa Ricans who are the beneficiaries of such allowances and that the Family Allowances Social Development Fund (FODESAF) is one of the sources of financing for the Housing Subsidy Fund (FOSUVI), which is one of the two basic funds on which the Housing Mortgage Bank draws, has led to queries as to whether foreigners, even if they are permanent residents, can be granted housing loans. However, to date the policy of the Institute for Housing and Urban Affairs has been to allow their participation, so long as they fulfil the other requirements for granting that benefit.

459. Nevertheless, in that regard the Office of the Ombudsman is investigating several reports of restrictions imposed on migrants' obtaining financing, specifically in regard to housing loans.[60]

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[58] State of the Nation project, Estado de la Nacion en desarrollo humano sostenible 2000 (State of the nation in sustainable human development 2000), p.131.

[59] Office of the Ombudsman, Informe para el año 2000 (Report for the year 2000).

[60] Office of the Ombudsman, communication PE-407-2000, 30 October 2000, p.19.

ii) Housing in indigenous communities

460. In regard to the housing needs of indigenous communities, their problems are directly related to environmental degradation and the reduction of the resources they need for housing, as well as to difficulties of effective ownership of the land. One of the serious mistakes made by government administrations over the years has been to impose western-style housing on indigenous communities. On the basis of these observations some corrective measures have been adopted to ensure that housing programmes take account of cultural patterns in indigenous communities.

461. Another factor that has affected housing and related services has been the difficulty of building an extensive water-supply network. Unfortunately, budget restrictions and the wide dispersal of families in the indigenous territories have limited the extent of the network, which has led in turn to health and education coverage statistics that are lower than the national average.

462. The report entitled "Profile of the Indigenous Peoples of Costa Rice", prepared by the World Bank, describes the housing situation in the indigenous communities and in general terms states that in many communities traditional housing is no longer built for lack of the proper materials. In some communities, such as Nairi-Awari, the inhabitants have said that they do not want housing projects but prefer to continue to preserve their traditional housing.

463. The indications of the lack of housing given in the study are of some 20 houses for young couples in Bajo Chirripo and Nairi-Awari, in the Chirripo area, 622 in the Talamanca valley and some 130 in the Buenos Aires area.[61] These figures do not include data from some communities that lack precise records.

464. To tackle this problem, the Ministry of Housing and Human Settlements has made assessments of the inhabitants' needs in the indigenous communities, since subsidies are available for this sector of the population, regardless of whether their properties are registered or not.

465. Among the indigenous communities assessed during the period 1999-2000, housing construction has been processed, approved and funded in the communities of Boruca, Guaymi, Coto Brus, Guatuso, Quitirrisi, Baja Talamanca and Bajo Chirripo under a pilot plan to be opened up to other regions as part of a programme to incorporate indigenous persons fully into the national housing finance system as far as the benefits it offers are concerned.

466. On 13 October 2000, the President of the Republic promised 42 vouchers for housing to the indigenous people of the communities of Suretka, Keköldi and Corona de Talamanca.[62]

467. In addition, the Government recently launched a project in the community of Talamanca for the construction of 25 houses with funds from the Joint Institute for Social Assistance (IMAS), the Costa Rica-Canada Foundation and the Ministry of Housing and Human Settlements, in co-ordination with the National Programme of Indigenous Housing and Settlement.

4. Right to health

468. The institutional policy of the Costa Rican Social Security Fund is to allow all the inhabitants of the country, without any discrimination, access to health services. This policy applies from the operative

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[61] World Bank, Regional Technical Assistance Unit (RUTA) project, op.cit.

[62] "Rodriguez llama a la calma" (Rodriguez calls for calm), La Nacion, Saturday 14 October 2000, "El Pais" section, p.5A.

levels, such as the Basic All-Round Health Care Teams (EBAIS), down to the centres of level IV, such as hospitals. Its justification resides in the principles of universality and equality in social security.

469. In the field of health, Costa Rica has a system of universal coverage that reflects the provisions of article 33 of the Constitution, referred to earlier, and therefore no group is excluded from health care. Social security has been made comprehensive and so all those who live in the country have a right to its services in the area of health, which they can exercise by means of different forms of insurance: compulsory, voluntary, direct-payment or State-funded insurance for vulnerable groups such as the destitute or foreigners.

470. The Constitution's provisions in the area of health are also reflected in the Code on Children and Adolescents, which states in article 41 that "Minors shall enjoy free health care provided directly by the State. Public centres and services for health care and disease prevention shall be obliged to provide the service these individuals require immediately, without discrimination as to race, gender, social status or nationality. They shall not be permitted to allege the absence of legal representatives, a lack of documentation, a shortage of space or any other circumstance."

471. The legislation is complemented by article1of the Health Insurance Regulations which establishes comprehensive health insurance, on the basis of article 177 of the Constitution.[63] That article 1 states that "health insurance is compehensive and covers all inhabitants of the country".

472. The principle of equality is set forth in article 2 of the Health Regulations, which provides that "all those insured are equal before the law and these regulations. No discrimination may be practised for economic, ethnic, religious, ideological or any other reasons offensive to human dignity. Only those distinctions shall be made that are appropriate to the type of disease or illness."

473. The Costa Rican statistical system has no disaggregated data on the nationality of the minors being treated, but it can be affirmed that the country's medical care system treats without distinction all the Nicaraguan children who day by day enter the country with their parents in search of a better future. The medical care includes both preventive and curative treatment, minors being included in the national vaccination plans.

474. Another important point to make here is that the national hospitals do not keep a register of births, but simply send a form to the Civil Register reporting the birth of a child. Costa Rica's disaggregated statistical records in that case make no distinction as to the nationality of the parents. According to article 13 of the Constitution of 7 November 1949, "The following are Costa Ricans by birth: ... 3. A child born in Costa Rica of foreign parents, who is registered as a Costa Rican by wish of either of his parents during minority or by his own wish up to twenty-five years of age." This is fundamental, since on the subject of nationality the country has adopted both ius solis and ius sanguinis.

475. To comply with the principle of equity in the provision of medical services, the Costa Rican Social Security Fund has through reforms managed to modify the allocation of financial resources to ensure greater equity both in access to services and in their optimal distribution to improve the health of the population.

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[63] Constitution, art.177, "... In order to obtain comprehensive social security coverage and to fully guarantee the payment of the State's contribution, both as the State and as employer, sufficient revenues shall be designated for the Costa Rican Social Security Fund, calculated to satisfy the present and future needs of the institution ...".

476. In November 1999, that institution made an analysis of resource allocation using the per capita distribution of public expenditure on primary health care by canton in comparison with the Social Development Index (IDS).

477. This study has allowed a re-allocation of resources, so that today the cantons of the metropolitan area (San José, Alajuela, Cartago and Heredia) which are relatively more developed than the rest of the country (Puntarenas, Guanacaste and Limon) have a lower volume of per capita resources allocated them. This is an improvement in terms of equity, the rural cantons (whose health needs are greater) receiving on average a larger volume of economic resources.

i) Health in the Afro-Costa Rican communities

478. Although, as has repeatedly been said, Afro-Costa Ricans are found throughout the national territory and as nationals enjoy the benefits of the comprehensive health system, their representatives have pointed out some weaknesses in the system.

479. In that regard they say that "studies of medicine in the areas inhabited by Afro-Caribbean people are based on parameters borrowed from developed countries and geared to a Caucasian population and therefore fail in their diagnosis of the health of the Afro-Costa Rican population in such fundamental areas as diet, diseases and age groups". They also criticise the absence of specific health indicators that would allow preventive measures and campaigns to be undertaken targeted to the specific needs of the Afro-Caribbean ethnic group.[64]

ii) Health for the migrant population

480. Government policies have been faced with an important problem, namely how to net the illegal immigrant population coming from Nicaragua, who often do not seek health services for fear of being deported.

481. A document prepared by USAID technicians after hurricane Mitch had passed through Central America revealed the health situation of migrants in Costa Rica. The report stated that "the immigrant population has little knowledge of health and nutrition practices, a higher incidence of infectious diseases and parasites and higher maternal and child mortality rates".[65]

482. One of the serious problems facing migrants is their fear of being caught out in an irregular situation and as a result deported. For that reason they prefer not to attend health centres, unless their health is very bad, even though services are offered free for humanitarian reasons. The authorities and officials of the Ministry of Public Health use the broadest criteria for health treatment and there is a clear guideline that they should not deny health care to anyone who requests it. Furthermore, there is a body of law that supports energetic public action in the area of health care and that is based both on constitutional guarantees and on the General Act on the Protection of Adolescent Mothers and the Code on Children and Adolescents.

483. Here it should be stressed that the Costa Rican comprehensive health system stipulates compulsory care to be given to all inhabitants not only in the area of prevention and immunization but also in that of medical treatment and the supply of some medicines, all without distinction as to nationality. The Costa Rican health system is governed by the concept of the universality of the right to health care and by its responsibilities for health, as well as by the right to quality care which includes access to all services and

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[64] Duncan and Allen, op. cit., p.64.

[65] USAID, Costa Rica Mitch design team debriefing, 18 October 1999.

the supply of medicines. Particular emphasis is laid on women's right to pregnancy care, as well as to general care.

484. The towns which are at a disadvantage with regard to health compared to the rest of the national territory are: Talamanca, Dota, Matina, San Pablo de Oreamuno, Los Chiles, Sarapiqui, Buenos Aires de Osa, Moravia de Chirripo, Coto Brus, Upala, La Cruz, Santo Domingo de Heredia, Leon Cortés and Aserri. We should make it clear that the great majority of these towns are indigenous population centres or towns that border on Nicaragua whence the greatest number of migrants come.

485. The implications of the presence of migrants in the health system have a palpable impact on the finances of the Costa Rican Social Security Fund, the principal institution of the national health system. According to accountants' studies, it is a well-known fact that more is spent on Nicaraguans than they contribute to health insurance, in part owing to their demand for the services provided in the different health care centres and in part to their undocumented status, which limits the social security contributions.

486. An estimate made by the Actuarial and Economic Planning Department of the Costa Rican Social Security Fund shows that in 1999 health-care costs for migrant groups exceeded contributions by about 3,832 million colons, or 1.8% of the total health insurance expenditure.

487. The following table shows the health-care costs and the contributions of Nicaraguan immigrants:

Item	*1997*	*1998*	*1999*
Total cost (millions of colons)	4,731	5,886	6,799
Cost of ambulatory care (millions of colons)	1,625	2,105	2,446
Cost of emergencies (millions of colons)	327	438	536
Cost of hospitalization (millions of colons)	2,780	3,343	3,817
Contributions	1,316	2,000	2,976
Déficit	3,415	3,886	3,823
Effective expenditure on health	127,215	165,793	215,531
Percentage	2.7	2.3	1.8

Source: Costa Rican Social Security Fund, Actuarial and Economic Planning Department.

488. According to an article in a Costa Rican newspaper, "Nicaraguans attend health centres less often than nationals, since they only use 4% of the total services provided, although they represent 10% of the population of the country. Two factors explain this phenomenon: very few Nicaraguans make contributions to the system - at most some 30,000 - and those that do so report salaries 50% lower (about 56,000 colons per month, that is US$ 181) than the average for the rest of the country (some 100,000 colons, or US$ 324)."[66]

489. The report of the Office of the Ombudsman for the year 2000 says that in 1998 the services most used by Nicaraguans were obstetrics and out-patient care. Other relevant data are the age of the migrant population treated which ranged from 15 to 49 years and the health profile, which in the case of men showed work-related pathologies and in the case of women, reproductive health problems, which points to an absence of family-planning methods.

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[66] "Nicaraguenses impactan salud" (Nicaraguan impact on health), La Nacion, Tuesday 7 December 1999, "El Pais" section, p.4A.

490. A similar report prepared by UNDP lists the principal causes of hospitalization for men as being wounds and traumas, psychosis and tumours; women, on the other hand, were hospitalized for complications in childbirth, normal childbirth, psychosis and tumours.[67]

491. Although they do not pay into the public health system, illegal immigrant workers receive free medical care provided by the Costa Rican Social Security Fund. According to the records of that Fund, approximately 8% of hospital outlays are for foreign patients, which obviously translates into acute pressure on the budget for the assistance provided daily by the State.

492. On the subject of access to medical care, it should be pointed out that foreigners with temporary or permanent residence permits can join the system of medical care coverage upon presentation of an up-to-date residence permit or, failing that, the immigration document proving their status.

493. Where illegal aliens working for an employer are concerned, although article 75 of Act No.7033, the General Act on Migration and the Status of Aliens, stipulates that aliens residing illegally in the country may not work or engage in wage-earning or gainful activities for their own account or that of a third party, the Legal Department of the General Directorate of Migration and Aliens has nevertheless said that "what generates the obligation to insure a given worker is his dependency, without his migrant status having any overriding importance" and, from now on, the affiliation of such persons is authorized on presentation of a provisional employer's order that proves their date of entry into employment and their status as salaried workers.

494. Where self-employed illegal aliens are concerned, they cannot be affiliated in any circumstances until they prove that they have legalized their migrant status.

495. Destitute illegal aliens domiciled in the country may obtain restricted affiliation where the situation is such as to merit extending the benefit for humanitarian reasons or for social convenience. Such persons are said to be insured at the State's expense.

496. Despite such provisions, in cases of emergency there are no prior requirements for medical care given to the migrant or to his family; no restrictions are imposed on medical care for humanitarian reasons when circumstances so dictate.

497. Another study along the same lines by FLACSO says that access by the Nicaraguan immigrant population to social security is 51.5%, while among Costa Ricans this figure rises to 90.4%.

498. The impact of the migration phenomenon on health indicators in Costa Rica is neither direct nor quantifiable, but some figures show a parallel between the massive influx of Nicaraguans and the decline of some of the health indicators.

499. According to the document, "between 1985 and 1997 the health indicators showed increases that exceeded expectations. For example, the infant mortality rate increased 11% between 1989 and 1990, rising from 13.9 to 15.3 deaths per thousand. Another marked increase was observed between 1996 and 1997, when that rate increased by 20%, rising from 11.8 to 14.2 deaths per thousand".[68]

500. In that regard, the Costa Rican Government's document requesting the co-operation of USAID says that "from the health authorities' point of view, the illegal immigrant population that the health controls do not reach are having a crucial impact on the behaviour of those indicators".

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[67] UNDP, op.cit., p.171.

[68] FLACSO and IOM. Office of the Ombudsman, Report for the year 2000.

501. Concerning the fertility rate of the Nicaraguan population, the FLACSO and IOM study states that births to Nicaraguan mothers show a constant increase in Costa Rica from a rate of 2.9% of total births in 1987 to 8.7% in 1996. From 1993, the increase in births begins to be obvious (4.5%). That is to say that in three years the Nicaraguan birth rate doubled.[69]

502. To enhance prenatal care, in September 1999 the President of the Republic and the Minister of Health signed a decree whereby the treatment of pregnant women would be a priority, whether they were insured or not. That decree gave priority to prenatal monitoring and guaranteed that the EBAIS Teams would treat people in remote areas.

503. Despite the above-mentioned situation, the preventive measures that have been adopted have in the last two years brought about a decline in infant mortality, 95.5% immunization coverage of children under a year old and a decrease in pregnancies.

504. Because of its limited economy, Costa Rica has no special fund for the repatriation of foreigners who have died in the national territory. When this happens, once the autopsy has been carried out by the competent authority and the identity of the deceased has been established, the deceased's embassy or consulate is contacted so that they can inform the family. It is the diplomatic mission or the family of the victim who assume the costs of repatriation. If the diplomatic mission or consulate concerned reports that they do not have the funds to return the body to the country of origin or if the person's remains are not claimed by anyone, they are buried in the general cemetery.

iii) Health in indigenous communities

505. Although it cannot yet be asserted that the country has a health programme in place for the indigenous communities, it is important to point out that the authorities concerned are acutely aware of the specific needs of that population; a clear indication of such awareness is the agreement signed in March 1999 by the authorities of the Costa Rican Social Security Fund and the Buenos Aires regional indigenous organization ARADIKES. That agreement provides among other things for the involvement of traditional doctors in the treatment of disease. That project also responds to a concern expressed by the Office of the Ombudsman in its report for the year 2000, which spoke of a failure to promote natural indigenous medicine.

506. However, the main problem with regard to medical and health care is still the use of traditional models devised for urban or marginal communities, which in fact hinders access to the programmes offered by the Ministry of Health or the Costa Rican Social Security Fund. Times of opening, identity card requirements, appointment lists and a lack of specialists, family guidance or reproductive health programmes are matters that raise problems for the treatment of indigenous people.

507. The Office of the Ombudsman in its report for the year 2000 says that there is also a high level of infant mortality (three times the national average), the result, above all, of the lack of drinking water, the absence of sewage treatment (dry latrines) and the hygiene conditions in general. That is compounded by malnutrition and a lack of disease-prevention programmes for these people.[70]

508. The main reasons for consulting a doctor in the indigenous communities in 1998 were the following:

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[69] FLACSO and IOM, Informe Defensoria de los Habitantes 2000 (Report Office of the Ombudsman 2000).

[70] Office of the Ombudsman, Annual report 2000, p.277.

i) Acute respiratory infections (ARI) among children, adolescents, adults and the elderly and, among adolescent women, prenatal check-ups;

ii) Piodermatitis among children; dermatitis among adolescent boys; ARI among adolescent girls; lumbago among adult men; family planning advice for adult women; and lumbago among older adults;

iii) Watery diarrhoea among children; traumas among adult men; prenatal check-ups for adult women; and bone and joint disorders among older adults.

509. In 1999, in its role as the governing body for the health sector, the Ministry of Health implemented a series of programmes focused on social and environmental aspects to improve the health of the indigenous communities: national coverage by the Expanded Immunization Programme; vector control to eradicate malaria and dengue fever; and infant nutrition and development by means of all-round treatment involving the supply of food supplements, milk distribution and growth monitoring, with emphasis on the children suffering from malnutrition and pregnant and nursing mothers at or below the poverty line.

510. Among other actions undertaken by the Ministry of Health are the environmental clean-up programmes that deal with two problems: drinking water supply and sewage disposal. The Costa Rican Institute of Water Supply and Drainage (ICAA), the Costa Rican Social Security Fund and the Ministry of Health are undertaking concrete action for the construction of rural water systems and the basic sanitation project (SANEBAR) which consists in installing latrines and hand-operated pumps. There are also campaigns to teach people hygiene and clean habits.

511. The results of the solutions applied by the Costa Rican Social Security Fund in the indigenous communities were evaluated between August 1996 and December 1999 and showed the following actions undertaken: 40 medical visits, 3,785 patients treated, more than 8,750 medicines distributed and more than 3,086 vaccinations administered. These figures only concern the medical visits scheduled by the support teams and do not include consultations recorded by the EBAIS.

512. The results of the different programmes of coverage and treatment between August 1996 and December 1999 show an extension of the infrastructure as revealed in the following achievements:

i) Equipment of rural health posts in Alto Pacuare and Xiquiali (2 million colons);

ii) Construction and equipment of health posts in Xuquebachari (9 million colons);

iii) Construction of health posts in Bayei (3 million colons). These were financed by the Canada Fund and built with manpower from Youth Challenge International;

iv) Construction of health posts in Alto de Quetzal (5 million colons);

v) Radio communication network installed in 11 rural health posts (5.5 million colons);

vi) Refrigeration for solar panels in rural health posts (9.5 million colons);

vii) Installation of electric generators in health posts (1.7 million colons);

viii) Acquisition of equipment for the work team (field tents, security equipment, rubber boots, pans etc.);

ix) Design and co-ordination of the construction of health posts in Santa Rosa de Chirripo;

x) Installation of a relay station and new exclusive radio frequencies for the Jiménez-Turrialba health area (6.4 million colons);

xi) Purchase of 10 horses to transfer equipment to the area (1.2 million colons).

513. For the supervision and training of indigenous technicians, during the period referred to courses have been given on handling dental emergencies and techniques for tooth cleaning, as well as all-round training courses in indigenous primary health care, held in March and April 1999 and comprising 130 hours of classes. The latter courses included training in advanced first aid assistance, given by fire brigade technicians; operation and maintenance of radio equipment and electric generators, given by communications technicians from the Costa Rican Social Security Fund; and the procurement of financing for the Cabecar Pro-Health 2000 course, a sum of 1.2 million colons.

514. In the area of research and analysis, data have been gathered for a study on the ratio of weight and height to age in indigenous children under the age of 10; in the National Institute of Science for Nutrition and Health (INCIENSA) a doctor has been trained for promotional work who is now preparing an array of sputum samples for the diagnosis of tuberculosis; and, finally, counselling has been given to indigenous technicians in data collection and drawing up balance-sheets, which is very useful information for diagnoses of the real health situation in the indigenous communities.

Quitirrisi indigenous territory

515. Quitirrisi was declared an indigenous territory in 1981. At present it has drinking water supplied from a well near the hamlet. Health care is provided by EBAIS Ciudad Colon No. 1, whose headquarters are at the clinic five kilometres from the reservation. A primary health care specialist makes priority visits to the reservation and a nurse's aide ensures follow-up for those cases that require it.

516. The Ministry of Health has for its part implemented the ECOS programme in the community, using the services of a social worker. A technician is in charge of environmental clean-up and officials from the Fund and from the Ministry of Health are co-ordinating their work for the care of the community. What is lacking are primary health care specialists for adequate coverage of this population's needs.

517. The Mora Palmichal health area has about 1,000 inhabitants. Visits are made to this reservation once a week and an average of 30 persons, children, adolescents, pregnant women and older adults, are treated. A fully equipped consulting office is available for this purpose.

518. The directors of the EBAIS recognise that one visit a week is not enough to meet the needs of this population; unfortunately, economic reasons prevent the Fund's administrators from employing more staff to work with this EBAIS, which has assigned to it only one emergency doctor who visits on Mondays and the medical director who covers for him if he is absent. On the other days the patients have to go to the EBAIS at Ciudad Colon, 10 kilometres away from that locality.[71]

519. In relation to the inter-institutional health care plans, there is a Health Committee which meets monthly with the Area Health Board to analyse the problems and seek solutions to them.

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[71] Letter A-S-M-P-D-M-0050-2000, dated 31 March 2000 from Dr. Gerardo Arias Arroyo, medical director of the Mora Palmichal health zone addressed to Dr. William Lao, South Central Regional Directorate.

520. The health indicators for the region in July 1998 were the following: 10 women had prenatal check-ups; there were 14 deliveries; the growth and development of 99 children was being monitored; and 80 children were vaccinated, which represents 80% of the whole. Where diseases are concerned, the main reasons for seeing the doctor were acute respiratory infections, anaemia and parasite infestations. In 1997 seven cases of tuberculosis were treated, six of them children and one an adult.

Zapaton indigenous territory

521. The indigenous territory of Zapaton, with a population of 379 inhabitants, was constituted in 1979 and belongs to the health area of Puriscal-Turrubares. Health care is provided by the EBAIS at Salitrales, 23 kilometres from the reservation. This reservation is visited by a doctor every fortnight, at which time he works on preventing and curing problems, with emphasis on the former. On one occasion in 1999, the Mobile Dental Unit visited a school in this area and treated all the pupils and on six other occasions it visited the EBAIS to treat the rest of the population.

522. The Medical Department of the Costa Rican Social Security Fund is at present considering a project for improving the physical plant of the Zapaton health post, estimated to cost 3.36 million colons.

Chirripo Cabecar indigenous territory

523. The indigenous territory of Chirripo Cabecar has an EBAIS and eight health posts, for a population estimated at 4,282 indigenous people. The health posts are only accessible on foot or on horseback.

524. The innovative programme of comprehensive health care that has been implemented for the Chirripo-Turrialba indigenous people covers the communities of Pacuare, Cabeza de Buey, Chirripo, Tsipiri and Awari Vereh, which, like the great majority of indigenous communities, despite the public policies of the Costa Rican Government, still suffer from poverty, a lack of educational opportunities, malnutrition, scarce means of communication and scant medical care.

525. The programme, set up at the request of two doctors in August 1998, has the support of the Costa Rican Social Security Fund and the Ministry of Health and to date has involved the establishment of 11 doctor's offices with first aid equipment, dispensaries, radio communications and solar panels. A sum of about 43 million colons has been invested for that, contributed by the German Technical Co-operation Agency, the German Embassy, the Canada Fund and the programme Youth Challenge International.

526. An essential aspect of the project is the participation of society. All the primary health care specialists in the community and the Chirripo Development Association take part in it. Inter-institutional support is provided via the Turrialba Inter-institutional Indigenous Committee, which co-ordinates action with the social assistance organizations working in the area, and there is support from non-governmental organizations.

527. The Turrialba-Jimenez health area has 10 primary health care technicians (ATAP) of indigenous origin who speak the Cabecar dialect and they take care of vaccinations, health education and some direct care. Each week they provide assistance with the language problem during appointments with the doctor, for whom the ATAP act as translators.

528. Including the EBAIS, there are the following posts:

i) The indigenous EBAIS of Tayutic, situated an hour's walk from La Suiza, which provides care to indigenous communities during weekly visits;

ii) The Sinoli health post, situated six hours' walk from a road that is suitable for vehicles and serving the localities of Brasil, Cuen, Sinoli and Wxcabata;

iii) The Xiquialy health post, located eight hours from the vehicle road and serving the localities of Buyei (Bolori), Buyei (Xinabla), Buyei (Xordi), Tamija (Buyei), Wiquiali Este, Buyeiñah, Nari, Alto Xiquialy and Xiquialy;

iv) The Santa Rosa de Chirripo health post, two hours from the vehicle road and serving the localities of Bloriñak, Tsipiri, Tapaldy, Sarchi, Talabata, Santa Rosa, Raiz de Hule and Kosbata;

v) The Paso Marcos health post, an hour from the vehicle road and serving the localities of Paso Marcos Arriba and Paso Marcos Abajo;

vi) The Alto Pacuare health post, four hours on foot from the vehicle road and serving the localities of Nimari, Valle Escondido, Alto Barbilla and Alto Nimari;

vii) The Xequexachari health post, located eight hours from the vehicle road and serving the localities of Xuquevachari, Bracil and Jaxvchari

viii) The Grano de Oro health post, accessible by car, serving the localities of Quetzal, Lote dos, Xarañac, La Fortura, Seis de Grano de Oro and Grano de Oro.

529. The remoter posts are visited monthly, since the average distance is six hours on foot from the vehicle road. Usually the posts are manned by staff from the William Allen Hospital in the town of Turrialba.

530. As is the rule in most indigenous communities, tradition plays a role in health practices. The communities in the Chirripo reservation are no exception here and, according to reports from the primary health care technicians for the year 1998, a high percentage of births are recorded as having taken place elsewhere than in a hospital, without any hygiene or expert assistance.

531. The most revealing indicators on pregnancies are the following: of a total of 204 pregnant women in 1998, only 14 (7%) attended a medical centre, while 190 (93%) were not monitored during pregnancy. The number of women recorded as using family planning is 121, the equivalent of 13% of the total population of child-bearing age, which is 904 women.

532. Another indicator of women's health is the number of vaginal smear tests done to detect cancer of the neck of the uterus. Since this is a forbidden area of the body, it is difficult to get the women to come and be examined unless they have symptoms. Thus, only 23% of women for whom it is indicated have had that test.

533. With regard to the nutritional situation, the records for 1998 report 350 children with mild malnutrition, 132 in whom it is moderate and 21 in whom it is acute. For an understanding of these indicators in the context of indigenous populations, the following points must be made.

534. First, the diagnosis of malnutrition is made using weight-height tables prepared for North American children and so indigenous children will always register below the desired level.

535. Secondly, the kind of food eaten by the inhabitants of these regions is basically beans, yucca and plantain, which provide them with the iron and carbohydrates they need. The great majority of them eat pork, fish, chicken or eggs twice a week to supplement their diet with protein and basic fats.

536. The progress made in health care policies enables us to point to the following important achievements:

Type of care	*Care prior to 1995*	*Post-1997 care, with Programme of Comprehensive Indigenous Health Care in operation*
Medical coverage	None or assistance by helicopter every six months	On average weekly, per circuit; all-round assistance
Technical assistance	A single technician without support or supervision	10 well-trained technicians with support and supervision
Vaccinations	None	System of refrigeration with solar panel at each health post
Health posts	Two, virtually abandoned	Nine well-equipped posts and two medical huts
Communications	None	A radio system at each post. Relay station installed and use of radiotelephones
Co-ordination	None	Post of medical representative
Medical records	No assistance during appointments	Personal files and epidemiological studies

Source: Programme of Comprehensive Indigenous Health Care; Cabecar Chirripo Pro-Health Programme, 1999.

537. The health and health-care indicators from January to May 1998 are as follows: total appointments, 488; 250 were for children 0 to 9 years old; 72 for adolescents; 91 for women 20 to 59 year old; 55 for men 20 to 59 years old; and 19 for persons over 60 years. Vaccination coverage is 100%.

538. The development of the Chirripo-Turrialba Comprehensive Indigenous Health Care Programme geared to meeting the needs of indigenous families in Pacuare, Cabeza de Buey, Chirripo, Tsipiri and Awari Vereh is a further demonstration of the human solidarity that has complemented the care system set up by the EBAIS.

539. Those communities are characterized by poverty and a lack of opportunities for education. The high levels of malnutrition, the lack of means of communications and the scant medical care they were receiving led a group of doctors to help those communities.

540. Caring for those families was not an easy task, since the great majority of the 5,000 inhabitants of the indigenous reservation of Chirripo are scattered throughout the mountains and so the team of doctors had to travel more than three hours by car from the town of Turrialba (70 km. from San José) and then walk for a similar length of time.

541. The health care programme saw the light of day in 1998 and has the support of the Costa Rican Social Security Fund and the Ministry of Health. Since 1998, 11 doctor's offices with first aid equipment, dispensaries, radio communications and solar panels have been set up. Forty-three million colons (approximately US$ 138,700) have been invested in these centres, a large proportion of which was contributed by the German Technical Co-operation Agency, the German Embassy, the Canada Fund and the programme Youth Challenge International.

542. Technicians originating from the reservations have also been trained to give primary health care and advanced first aid, to deal with dental emergencies and dental hygiene and to handle radio equipment.

543. As a new health care venture, in October 2000 the Costa Rican Social Security Fund set up the first indigenous doctor's office among the health centre facilities in the indigenous territories.

544. Thus, from now on the indigenous people of Talamanca have a doctor's office where every day they are attended to by three or four kekepäs (elders), in the same facilities as the EBAIS of the Suretka community, the first and only office of its kind in the country and perhaps in the world.

545. From now on the indigenous people can choose whether they want to consult a white doctor from the social security or a kekepä who in addition to his own skills, has had and will continue to receive appropriate training from medical science professionals in the treatment of the particular ailments that afflict the inhabitants of the area, such as snake bites, diarrhoea and colds.

546. The kekepäs will be able to use the medicinal plants of their communities, which will be grown and picked under the Namasol project, financed by the Government of the Netherlands and will include, for example, guava leaves, lemon, mozote, saragundi, dormilona and hombre grande.

547. Now that this first shared doctor's office has been opened, the health authorities in Costa Rica are hoping to train other health providers to attend the sick in their own communities, particularly in emergencies and when the natural conditions make speedy hospitalization difficult.

548. Another important aspect of this shared office is the encouragement it gives to the preservation of indigenous customs and knowledge, fostering research into the medicinal plants native to the region and their cultivation. To that end an agreement has been signed between the Social Security Fund and the Talamanca Integral Development Association, whereby the Joint Institute for Social Aid (IMAS) and the Bribri Women's Group commit themselves to a communal gardens project where they will sow local medicinal plants.

549. To support the medical efforts of these indigenous communities, the Costa Rican Social Security Fund gave the EBAIS of Suretka a boat with an outboard motor as an ambulance to transport the sick. The boat was entirely hand-made by an indigenous man using a huge tree trunk.

550. The ambulance will be used at night when the EBAIS is closed and will be very useful when emergencies arise needing immediate attention and transfer either to the community clinic at Home Creek or to the Tony Facio hospital in the town of Limon.

551. The executive agency for health matters also gave the Daytonya and Home Creek emergency services six hospital beds, two foetal monitors, two incubators, four cribs, two ceiling lights, six weighing scales, two laryngoscopes, seven adult weighing scales, three stretchers, two sphygmomanometers and a large quantity of office equipment.

552. Health operations are constantly under way in the indigenous communities, as can be seen from an article published in the newspaper La Nacion on 18 August which says that "a marijuana eradication operation was interrupted to go to the assistance of indigenous people suffering from diarrhoea in two communities of Alto Telire in Talamanca de Limon".

553. The operation enabled a doctor and four primary health care technicians to attend to some 200 indigenous people suffering from diarrhoea, vomiting and fever as the result of a virus. Some of them were in such a delicate condition that, if they had not received treatment in time, they would have died. The medical personnel stayed with the indigenous people for two days, during which time they administered saline solution, antibiotics and acetaminophen.

Osa indigenous reservation

554. The Presidential Commission study identified the following as the main health problems in this area. First, it referred to the poor state of the health post in Dos Brazos de Rincon, proposing as a solution the construction of a health post for 22 families at Alto Laguna and the transfer of the post from Dos Brazos. The cost of that work is estimated at 27 million colons (US$ 85,000) and it is hoped to complete it in 2001.

555. In addition there is the problem of water scarcity; staff of the water supply and drainage authority have been sent to do the preliminary studies in this regard.

556. Lastly, there is the lack of recognition of traditional medicine. In that regard, a project is being prepared with the Costa Rican Social Security Fund to integrate natural and traditional medicine, so that they complement one another.

557. Some successful experiments have been carried out in indigenous communities, such as the dental care project executed in the Guaymi territories in the south of the country from 3 to 7 April 2000.[72]

558. That experiment was the work of a group of 20 specialists from the clinics of La Cuesta, Alto de Comte and Golfito who made their way into the mountains to offer care, for only the fourth time in 20 years, to the population of the Guaymi indigenous reservation, situated 14 kilometres to the south of Alto Comte in the canton of Golfito.

559. The idea was the initiative of a dental surgeon at the La Cuesta clinic in 1980 and provided dental treatment for 200 children in the schools of Las Vegas, Progreso, Santa Rosa, Alto Comte and Kokoribta and for 150 indigenous adults who benefited from those services.

560. The visit also had an educational purpose, as the Guaymi population heard talks and saw plays explaining to them the importance of oral and dental health. The project's cost was 1,074,307 colons (about US$ 3,465).

561. In addition to the dental care (treatment of tooth decay, extractions, sealing of cracks and fluoride application), general medical care was offered to the population, permitting the detection on that occasion of 40 cases of parasites, anaemia and tuberculosis.

Kekoldi indigenous reservation

562. The Presidential Commission study found the main problems to be the lack of a health centre, the absence of an EBAIS, problems of dug addiction and alcoholism in the community, the increase in the numbers of single adolescent mothers and a non-existent water supply.

563. The solutions proposed are to build a 48 square metre health post, staffed as a priority by a doctor from the region with knowledge of natural medicine and medical techniques, and a 60 square metre EBAIS with the capacity to treat 226 persons; to develop an integral programme to prevent addiction; to execute the Integral Programme for adolescent mothers; to hold training courses; and to lay a water-pipe with a collection tank to supply water to some 15 homes.

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[72] "Sonrisas en Reserva Guaymi" (Smiles on Guaymi reservation), La Nacion, Sunday 16 April 2000, "El Pais" section, p.18A.

Ujarras indigenous reservation

564. The Presidential Commission study identified the following problems in this area: no water-pipes, a high degree of alcoholism, a lack of permanent medical care, no emergency care, no child nutrition or health-care centres (CEN CINAI), and the need to pay certain allowances in special cases.

565. The solutions proposed for execution in the year 2001 are to lay a 5 kilometre network of water-pipes for five communities; to promote a programme of prevention; to increase medical visits; to acquire a vehicle to transport patients; to build a CEN CINAI; and to provide pensions for five persons with disabilities.

Matambu indigenous reservation

566. The Presidential Commission identified the problems in this reservation as being the need to expand the health post and the CEN CINAI centre, problems of drug addiction and alcoholism affecting the community and a lack of administrative furniture for the health post.

567. By way of solution it has been proposed to build and repair the health centres, at an estimated cost of 10 million colons (US$ 31,000); to develop a programme to prevent addiction that would be run by the National Children's Trust; and to procure furniture for the health post.

Tayni indigenous reservation

568. In the area of health, the Presidential Commission has identified as the main problems the lack of drinking water and of the basic infrastructure of medical care, the need for greater care and responsibility on the part of the technical assistance staff for primary health care (ATAP) and the problem of alcoholism and drug addiction.

569. As solutions the following have been proposed: laying a large network of water-pipes, for which a preliminary study already exists and which would be the responsibility of the water supply and drainage authorities; building two health posts in the communities of Moy and Isla Cuén, with the construction in the latter locality of an EBAIS; appointing four more staff to the ATAP programme; co-ordinating with the Social Security Fund to ensure better supervision; and, finally, launching and supporting campaigns to prevent addiction.

Comte Burica indigenous reservation

570. In this region the Presidential Commission identified the following health problems: no piped water, too few medical visits, no infrastructure, no latrine system, a need for training in all-round family health and in emergency medical care in the communities, a lack of basic medicines and an emergency dispensary, problems of alcoholism and drugs and a reluctance to attend State medical offices.

571. As possible solutions for execution in 2001, the following projects and initiatives have been recommended: laying three water-pipes, increasing the number of medical visits, building five EBAIS, installing 50 latrines, holding a workshop on all-round family health and family planning, running first-aid courses, obtaining a basic dispensary, developing a programme to prevent addiction and teaching the community about the importance of medical care and preventive medicine.

Telire indigenous reservation

572. The Presidential Commission has identified the following main problems in the reservation: polluted drinking water, a lack of basic medical care infrastructure, illnesses such as diarrhoea, vomiting

and malaria that are not adequately treated, problems of drug addiction and alcoholism, growing numbers of single adolescent mothers, poor waste disposal and an absence of immunization programmes.

573. As solutions to be put into effect within six months to a year the following were recommended: extending and improving the water supply network, building a health post and assigning a doctor to visit it frequently, as well as a permanent assistant, giving health training to eight young people, developing programmes to prevent addiction and programmes of all-round care for adolescent mothers, installing 94 latrines, 70 in Alto Telire and 24 in Bajo Telire, and organizing two immunization campaigns during the year.

Guatuso indigenous reservation

574. In the indigenous reservation of Guatuso, the Presidential Commission identified the following as the chief problems: insufficient health infrastructure, unsuitable drinking water, no waste disposal and no rubbish collection service.

575. As solutions to be executed in 2001 and 2002 it was recommended that the health centres in Palenque Margarita and Palenque Tonjibe be expanded and repaired and that an EBAIS be built in the former community; that the water-supply network be extended; that drainage systems be built according to the community's needs; and that a landfill site be arranged.

Altos de San Antonio indigenous territory

576. The Presidential Commission has identified the main health problems here as being: the lack of health centre for traditional medicine, discrimination against the indigenous doctor, lack of an emergency vehicle, lack of support for indigenous medicine, lack of first aid training and lack of latrines.

577. The solutions proposed are creating a health centre for continuing treatment by traditional and non-traditional doctors; instilling respect for the tradition of indigenous medicine; providing an emergency vehicle; setting up a fund to allow traditional indigenous doctors to teach indigenous people; providing first aid training for indigenous people; and installing latrines in 14 homes.

Alto Chirripo indigenous reservation

578. The Presidential Commission has identified as the chief problems of this reservation the lack of a technical assistant for primary health care, drug addiction and alcoholism, the need for more medical care, an absence of medical infrastructure and poor waste disposal.

579. By way of solution it has been proposed to train 10 persons to give an ATAP course; to develop a programme to prevent addiction; to increase medical visits to two per month; to build and to improve the health posts; and to install 300 latrines in the area.

Cabagra indigenous reservation

580. In this reservation the Presidential Commission has identified as the main health problems the lack of drinking water and the need to build and improve health centres and EBAIS.

581. It is proposed to consider laying a network of piped water and building EBAIS and health centres with the proper equipment in the communities of Las Brisas, San Rafael and Bolas. The estimated cost is 23 million colons (US$ 72,000) of which some 16 million colons have already been committed.

Talamanca Bri Bri indigenous reservation

582. The Presidential Commission has identified the following main problems in the health of this reservation: shortage and poor condition of health posts, insufficient basic equipment for medical care, water not suitable for drinking, poor waste disposal, lack of drainage, no programmes in health and nutrition, preventive medicine or first aid and a need for more medical care.

583. By way of solution it is proposed to build six health posts, to equip four health posts, to improve the water-supply network, to install 100 latrines and build two drainage systems, to carry out programmes of prevention and to assign more medical staff to the region.

Coto Brus indigenous reservation

584. The following are the main health problems the Presidential Commission has identified in this region: the lack of a CEN CINAI, of health infrastructure, of latrines and of equipment for water chlorination, and improper habits of hygiene.

585. The solutions proposed are the building and equipment of a CEN CINAI in the community of La Casona; the construction of health houses; the installation of latrines and instruction in their correct use; the installation of the equipment needed for water treatment; and the creation of vegetable gardens. As action by government institutions, feasibility studies, the reprogramming of medical visits, censuses of real needs and the promotion of official health holidays are recommended.

Chirripo Bajo indigenous reservation

586. The Presidential Commission has identified as the chief health needs in this reservation, basic medical care infrastructure and health posts, more medical care, programmes and resources for dealing with emergencies and better waste disposal.

587. By way of solution, the Commission recommends building, improving and relocating health posts, expanding the medical care, giving training courses in first aid and nutrition, carrying out preventive health programmes and installing latrines.

Boruca indigenous reservation

588. The Presidential Commission pinpointed the following as problems for priority attention: a lack of medical care, a lack of water pipes and the need to maintain those that exist, insufficient basic health infrastructure and lack of care for the elderly.

589. The Commission's recommendations are to assign a doctor permanently to the EBAIS at Boruca; to diagnose what the needs are and ensure the administrative management of the water supply to guarantee that it is profitable; to build two CEN CINAI and a doctor's office in the community of Ojo de Agua; and to carry out a programme of care for the elderly.

Curre indigenous reservation

590. The Presidential Commission identified the following as the main problems: insufficient medical visits for the care of some communities, a lack of latrines, a need for health posts, poor sewage disposal and allergic reactions to snake bites.

591. It recommends increasing the number of medical visits; undertaking a project to install 120 latrines; building health posts; elaborating a project for satisfactory sewage disposal; and carrying out a

Ministry of Agriculture and Stockbreeding programme of fumigation and training for the same. The hope is that most of these projects can be executed in 2001.

Abrojo Montezuma indigenous reservation

592. The Presidential Commission study identified the following problems: no clinic or equipment, no permanent doctor, no first aid training, a lack of latrines, health problems caused by plagues of mosquitoes, no training in preventive medicine, poor nutrition among minors, a lack of wheelchairs for disabled persons, no child-care centre for Ngöbe children and a lack of support for traditional doctors.

593. To resolve these problems it is proposed to build a clinic at an estimated cost of 27 million colons; to assign or appoint a permanent doctor; to train five persons in first aid; to install 15 latrines; to fumigate twice yearly; to train five persons in waste disposal; to hold training workshops in preventive medicine; to improve child nutrition; to allocate six wheelchairs; and to build a child-care centre. The bodies responsible for carrying out this work will basically be the Joint Institute for Technical Assistance (IMAS), the Health Department of the Fund and the Ministry of Health; it is estimated that the work can be done in 2001, once the necessary funds are available.

Salitre indigenous reservation

594. The Presidential Commission identified as the chief shortcomings in the health area the lack of medical care at the Salitre health post, the absence of a doctor and of medicines in Salitre, a shortage of latrines, a lack of emergency communications, a lack of pensions for the elderly, the sick and children, the lack of piped water, problems of addiction and poor living conditions for the elderly.

595. As possible solutions, the Commission recommends enlarging the medical posts and providing dental services; equipping the health centres; installing 160 latrines; setting up radio communications; providing pensions for adults over 60 years and for special cases; building and extending the water-supply network; implementing a programme to prevent addiction; and offering all-round care for the elderly while respecting their environment and their habits.

Térraba indigenous reservation

596. The Inter-Ministerial Commission identified the following problems in this area: a lack of drinking water and poor medical care. By way of solution it is proposed to lay water pipes in Térraba, to improve the system in San Antonio and to build an EBAIS. Concerning the water problem, the government report says that "there are no funds allocated from the budget of the water-supply and drainage authorities for these projects in 2000 and 2001. Pursuant to the studies, steps will be taken to provide financing. In any case the evaluations required prior to decisions on action will be made."[73]

Nairi Awari indigenous reservation

597. The Presidential Commission identified the chief health problems as being drug addiction and alcoholism, the increase in the numbers of single adolescent mothers, the shortage of Primary Health Care Technical Assistants (ATAP) and the scarcity of medicines in the health posts.

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[73] Commission of Ministers and Executive Heads, Térraba indigenous reservation, First workshop to validate needs and short-term institutional commitments, 12 October 2000, p.26.

598. As solutions it recommends launching an addiction prevention programme; implementing a programme of comprehensive care for adolescent mothers, together with the relevant training; training 10 more persons as ATAP; and supplying medicines for the health post.

iv) Water-supply and drainage systems in indigenous communities

599. In response to the comment made by the experts of the Committee on the Elimination of Racial Discrimination about the drinking water supply in indigenous communities, we must point out that the Costa Rican Institute of Water-Supply and Drainage Systems provides services over all and not by sector. However, in order to attend to the specific problems of non-dominant ethnic groups, the Commission belongs to a high-level inter-institutional commission working on a programme of rural development

600. That initiative, which is being sponsored by the President of the Republic, is focused on laying pipelines for indigenous communities in the areas of Ujarras and Térraba, in Osa, Los Altos de San Antonio and Zapaton. In addition, it is endeavouring to service the network and repair the pipes from source to storage tank.

601. Furthermore, the Water Supply and Drainage Institute has begun a project for the reforestation and rehabilitation of the Sarai river basin, located on the indigenous reservation of Ujarras in Buenos Aires de Puntarenas.

602. The river Sarai is the principal source of supply for the pipeline to the town of Buenos Aires, serving 15,000 users. The destruction of the environment in that river basin has led to a deterioration that threatens both the continuing supply and the quality of the water.

603. To reverse this situation, several institutions have joined forces to improve conditions in the hydrographic basin. As a first stage, it is planned to replant a swathe along both sides of the river with native tree species for three kilometres upriver from where the water is taken; in all 100,000 trees will be planted over two years.

604. This initiative was endorsed on 5 June 2000 by an inter-institutional agreement for the management and rehabilitation of the river basin. The main purpose of the agreement is to sensitize the indigenous population to the need to protect and manage areas of importance for the preservation of this water resource.

605. The following specific goals have been set: to reduce burning, at least in the areas where the water source is protected; to replant protected areas and ensure that the trees remain there, with care from the population; to organize groups in defence of the river basin, notably the Indigenous Development Association, ecological groups of young people and children and teachers' groups; and to make the population aware of the care that needs to be lavished on the river basin if they are to have good-quality water.

606. Another activity identified as being of importance for this population was the creation of communal and school vegetable gardens. This is being done in co-ordination with the Indigenous Development Association and the students of the Distance-Learning Secondary School. By undertaking this task they are trying to demonstrate to the inhabitants that the land they had left unprotected can provide them with food and help to improve their diet.

607. Some of the activities included in the project are the following: planned three-week visits and analyses in each of the centres of education; the preparation of a workshop, in co-ordination with the Ministry of Agriculture, to discuss problems of burning in the area, as well as a practical workshop on how to put out forest fires; four environmental workshops have been conducted for the teachers and

professors of the education centres concerned by the project to show them how to include in their daily teaching the knowledge they have acquired; and work is being done with young people in the community on land use and burning.

608. At the same time, a study done by the World Bank has revealed the true condition of the drinking water and the water-supply systems in the indigenous communities. The report states that in the communities of Guatuso and Maleku there are water pipes, but in the summer water becomes scarce and there are supply problems. The water throughout the region is considered to be of poor quality and is polluted.[74]

609. In the Huetar communities of Quitirrisi and Zapaton, in 1981 a pipeline was laid to supply 120 families; at present, twice as many users are reported and so there is insufficient water and it has to be rationed.

610. In the communities of Chirripo Arriba and Bajo Chirripo and Nairi Awari, although there is no water piped into any of the housing, they have a system supplying water by hosepipe or PVC piping. The water is considered of good quality because it comes from springs.

611. In the area of La Estrella, the communities of Tayni and Telire have piped water only in the villages of Xicalarbata and Bella Vista. The quality of the water drunk by the inhabitants of the other communities is not known and it is suspected that some health problems are due to contamination of the water by pigs and other domestic animals.

612. In the area of Talamanca, Bribri, Cabecar and Keköldi the quality of the water drunk by the inhabitants is considered unsatisfactory. There are 14 pipelines in the region, of which 13 carry water unfit for human consumption. Sixteen mini-pipelines need to be laid. In Keköldi there is no water pipe and families get their water through hoses from streams.[75]

613. In the communities of the Ngöbe peoples, in Coto Brus, there is no piped water and only in the one community of Villa Palacio do some houses have hosepipes to bring them water. In the territories of Comte Burica and Osa there is piped water in only two communities; in the rest it does not exist. En Abrojo Montezuma and Altos de San Antonio none of the communities has piped water.

614. Lastly, according to the report there are no studies on the Buenos Aires region. There has been no institutional follow-up on the water supply in the communities of the indigenous territories and the existing networks have been laid at the initiative of families or local people.[76]

5. Right to education

615. On the subject of education , article 78 of the Constitution stipulates that "General basic education is compulsory; this, the pre-school stage and diversified education are free and supported by the nation."

616. This constitutional provision is complemented by article 59 of the Code on Children and Adolescents which provides that "pre-school education, general basic education and diversified education shall be free, compulsory and provided by the State. Access to compulsory, free teaching shall be a

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[74] World Bank, Regional Technical Assistance Unit (RUTA) Programme, Profile of the indigenous peoples of Costa Rica, 2000.

[75] Ibid.

See RUTA Programme, op.cit., p.72.

fundamental right. The lack of government action to facilitate and guarantee it shall constitute a violation of the law and the competent authority shall be liable therefor."

617. The Constitution of Costa Rica, the basic Education Act and the Higher Council for Education constitute the three fundamental pillars that define, guide and delimit education as a process of all-round, compulsory, State-funded training. In addition, the education policy "Towards the twenty-first century", adopted in November 1994, stipulates in article 5 of its principles that "education is a fundamental human right to which every inhabitant of the Republic is entitled". Furthermore, the policy proposed, as a challenge to the country, the elimination from the system in general and from education in particular those elements that generate discrimination for reasons of gender, ethnic origin, age or socio-economic situation.

618. In keeping with the foregoing, Act No.7711 on the elimination of racial discrimination in education programmes and in the media was promulgated. Article 4 of that Act bans the dissemination in advertising or in education of ideas or messages whose content involves discrimination based on race, colour, religion, belief, ancestry or ethnic origin. Likewise, the Act, in article 5, gives the Higher Council for Education responsibility for "including in plans and programmes of study the principles of equality of opportunity and of the elimination of prejudice and stigmatization". It stipulates also that subject matter on the different ethnic groups and cultures shall be included among educational resources.

619. By this legislation we advocate in our country a system of education based on the principles of equality and equity for everyone without any distinction. To implement these legal measures, we have put into effect a series of plans and programmes to foster equality of opportunity for those population groups that face situations of social disadvantage.

i) Education for migrants

620. Pursuant to article 1 of the basic Education Act, education must be provided for all children of nationals and residents in the country, without any distinction or discrimination.

621. These provisions are being fully implemented, since the Costa Rican school system takes in a large number of Nicaraguan children of school age who request entry into our national centres of education. In this regard, there are no restrictions preventing the children of migrant workers who are without papers or in an irregular situation from entering establishments of public education in the country. In individual cases, they are given one month's grace for the presentation of identity documents or certificates of grades completed, to determine at what level to place them; likewise, the head of the school usually gives them a test to determine their level and, if what is required is entry into first grade or pre-school and they have no documents, there is provision for a sworn statement to be made before the head of the school.

622. The problems that occur most frequently with migrant children derive from their being too old and at the wrong level, since a considerable number of them are of a higher average age than Costa Ricans in the same class and there are great discrepancies in levels of knowledge. Only 28% of Nicaraguan children enter the system at the pre-school level, while for Costa Ricans that figure is 80% and so Costa Rican children have the advantage in learning habits, psychomotor skills and socialization.

623. Other factors affecting the full incorporation of Nicaraguan children that oblige the Costa Rican authorities to take specific action are illiterate parents and poor hygiene and a lack of civic education.

624. From an assessment of these circumstances it can be seen that situations of this nature jeopardize the effectiveness of the education system in areas of high incidence of immigration by increasing the

number of those that are kept down or punished, that have to repeat a year or that drop out, since they affect the numbers in school.

625. The total Nicaraguan student population for the year 2000 is 20,008 enrolled in formal education (primary and secondary school), of whom 61.4% are boys (12,286) and 39.6% girls (7,622). The student population below the poverty line is 20% in the case of nationals and 35% for Nicaraguans. In 1999, the number of Nicaraguan students enrolled in formal education represented 2.8% of total enrolment, which was already four times the number recorded in 1992.

626. In general terms, the number of foreign students in primary or secondary institutions in Costa Rica is 30,136, of whom 15,565 are boys and 14,571 are girls.[77]

627. The cantons taking in the largest numbers of migrant students are San Carlos, La Cruz, Los Chiles, Liberia, Upala, San José, Sarapiqui, Coto Brus and Pérez Zeledon.

628. The estimated cost to the education system of each migrant child is 132,000 colons (US$ 428) for a child in primary school and 242,000 colons (US$ 785) for one in secondary school.[78]

629. A decision of the Constitutional Court established the fact that school vouchers should also be extended to Nicaraguan children. School vouchers were conceived as a State subsidy to help families with scarce resources to meet the costs of keeping their children in school and thus prevent children dropping out. They are distributed at present by the Food and Nutrition for Schoolchildren and Adolescents Division (DANEA) of the Ministry of Public Education.

630. School vouchers were established by Executive Decree No.21989-MEP-MTSS. An action for unconstitutionality was instituted by a Costa Rican teacher against articles 6 and 7 of that decree and was admitted by the Constitutional Court, which in its argumentation stated that "articles 6 and 7 of the decree in question were contrary to the principles and rights of children set forth in international human rights instruments for the protection of children, especially as concerns the right to education. That the disputed articles violate the provisions of articles 19, 33 and 34 of the Constitution because they discriminate between nationals and foreigners in such a way that the abstract, general and absolute exclusion of foreign children as possible beneficiaries of vouchers for basic education constitutes unreasonable and disproportionate discrimination. That the right of children to basic education, as the fundamental right it is, cannot be made dependent on circumstantial considerations such as nationality."

631. Resolution 008857-99 of the Constitutional Court, dated 15 December 1998 declared the action was justified and "in consequence articles 6 and 7 of Executive Decree No.21989-MEP-MTSS, published in La Gaceta No.53 of 17 March 1993 are annulled as unconstitutional. This decision constitutes a ruling and has retroactive effect to the date of entry into force of the provisions now annulled, except in the case of rights acquired in good faith."

632. School vouchers comprise an economic subsidy of 9,000 colons per child up to three per family and include the provision of uniforms, supplies and shoes for school. The programme gives priority to marginal urban areas and the vouchers are handed out in February each year at the beginning of the school year. Each teaching establishment is allocated a specific number of vouchers according to the number of students enrolled. A committee appointed by the head of the establishment draws up a list and receives the requests of the neediest students.

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[77] Ministry of Public Education, Department of Statistics, May 2000.

[78] "Politica migratoria a paso lento" (Slow paced migration policy), Al Dia, Friday 19 November 1999, p. 4.

633. Once the pre-selection is complete, everything is transferred to the Joint Institute for Social Assistance (IMAS), where a further pre-selection is made on the basis of a scale of 59 indicators. Later, a visit is made in situ to gauge the degree of poverty. According to Ministry of Health statistics, 40% of the applications do not qualify.

634. The procedure is begun in October and November each year. A voucher is a bearer bond, usually in the name of the mother, that shows it can be exchanged for a given article. The important thing to stress is that vouchers are universal and make no distinction as to nationality.

635. According to figures in the document "State of the nation project" for the year 2000, an estimated 10% of vouchers distributed in 1999 were granted to Nicaraguan children.

636. There are no complete data on the levels of school education among immigrant workers; however, from the National Multi-Purpose Household Survey of July 1997 the Ministry of Labour and Social Security estimates the Nicaraguan migrants' education levels as follows:

Level of instruction	*Labour force*	*Employed*	*Unemployed*
	(Percentage)		
Total	100.0	100.0	100.0
No grade	8.2	8.7	1.2
Primary not completed	20.7	20.5	23.3
Primary completed	26.3	25.9	30.7
Secondary (grammar) not completed	25.2	25.0	27.6
Secondary (grammar) completed	11.9	11.8	12.4
Secondary (technical) not completed	0.8	0.5	4.9
Secondary (technical) completed	-	-	-
Para-university	0.7	0.7	-
University	4.1	4.4	-
Unknown	2.2	2.4	-

Source: Ministry of Labour and Social Security.

637. With regard to technical education, in 1999 the National Apprenticeship Institute gave training to 1,010 foreigners. This training consisted of courses in agriculture and livestock-raising, tourism, navigation, fishing, the food industry, crafts, materials technology, the textile industry, electronics, metal mechanics, commerce and services.

ii) Education for indigenous peoples

638. Over the last three years, Costa Rican constitutional law has been enriched by the revision of the Constitution previously referred to, which incorporated indigenous languages into the realm of what is protected, preserved and promoted by the State.

639. Likewise, with the agreement of the Higher Council for Education at its session no.34-97 of 8 May 1997, certain aspects of the indigenous context, such as, in particular, the mother tongue, the indigenous culture and environmental education, were included in the study plan for the first and second cycles of basic general education in the case of indigenous schools.

640. Lastly, with the agreement of the Higher Council for Education at its session no.47-99 of 10 June 1999, approval was given to the proposed plan of studies and programmes for courses on culture in the third cycle of basic general education at the high school in Boruca, which includes mother tongue, indigenous culture and environmental education.

641. The Ministry of Public Education has, through its Department of Indigenous Education, developed the following programmes:

i) The curriculum in context;

ii) Environmental education;

iii) Language, oral literature and grammar

iv) Culture, moral values of the indigenous world view;

v) Training;

vi) Human resources;

vii) Preparation of the relevant teaching materials.

642. At present these programmes are under way in 135 institutions, attended by 5,688 indigenous students, 3,070 of whom are male and 2,618 female.

643. A detailed breakdown shows that in the community of Guatuso and Maleku there are two schools, one in Palenque Margarita and one in Palenque Tonjibe; each has 70 pupils and teaches the first and second cycles. These schools have a bilingual teacher who gives 24 hours of lessons in each. As far as infrastructure is concerned, the schools are in poor condition and lack a dining room, a house for the teacher, a library, a store, an office for the principal, teaching materials, furniture and audio-visual equipment.

644. In the area of Quitirrisi there is a school, built in 1949, which has 5 classrooms, 143 pupils and 7 teachers who teach the six grades and the preparatory level. The community of Zapaton has a school in operation since 1953, which has 2 classrooms in poor condition and 5 teachers for 74 pupils. In the nearby community of Alto Pérez there is a school with one teacher for 18 pupils.

645. In the community of Chirripo illiteracy is estimated at 50%, while in the area of Chirripo Arriba it is around 90%. In 1993, 14 schools were opened, 13 of them in Chirripo Arriba; 12 have a single teacher each and 2 have principals, 1 because it has more than 40 pupils. For these schools there are 21 teachers, 15 regular and 6 itinerant, all indigenous. In 1997 an education centre was opened in Nimaldi; the physical plant is in poor condition and there is a need to build two more classrooms, a library and a school dining room.

646. In the area of La Estrella, Tayni and Telire, the last-named community has no school. In Tayni there are 7 schools, 5 with 2 teachers each and 2 schools with only 1 teacher each and a serious lack of teaching materials. Of the 12 teachers, 5 are indigenous. Three itinerant teachers of culture who are indigenous and from the community are assigned to provide support for these schools.

647. In the Talamanca area in 1999 the student population at the primary level was 2,125. There are 32 schools with 90 teachers, 80% of whom are indigenous; 12 of them are itinerant mother- tongue teachers and 3 are pre-school teachers. The infrastructure is recorded as being in poor condition in 8 of the schools and 18 others need more classrooms built. In the Talamanca region illiteracy is estimated at 28% and it is calculated that 50% of the population have completed primary school.

648. The figures for 1996 for the Ngöbe communities as a whole give 23 schools attended by 780 pupils with 30 teachers, of whom only 3 were Ngöbe. Most of the schools have problems of infrastructure and lack teaching materials.

649. In the region of Buenos Aires de Puntarenas there are 34 schools attended by the indigenous population, 23 with a single teacher, the rest with principals. Most of the teachers are indigenous and houses for teachers are among the basic needs.

650. It is important to mention that owing to budgetary restrictions, there are at present only two high schools in operation in the indigenous communities. They are making considerable efforts to ensure that the young people receive an academic training that respects and promotes their culture and at the same time prepares them adequately for higher education or vocational training.

651. These two establishments are the Sulayom High School in the Talamanca region and the Boruca High School; the former has 150 students enrolled for the year 2000 and the latter has 220. In some communities the proximity of a high school outside the indigenous territories has enabled some students to attend academic high schools in the region, but the numbers are not significant.

652. One of the most important obstacles these populations meet with is the fact that on moving into higher education or vocational training they must deal with a curriculum that takes no account of cultural diversity or the indigenous world view, but imposes western culture with its anthropocentric philosophy. This means that the few indigenous students who attend universities or vocational training centres generally end up practising their profession in the towns, to the detriment of progress in the indigenous communities.

653. In Costa Rica there is no academy or institute where the spirituality, the grammar, the world view, the eco-ethics or the communal philosophy of the indigenous peoples themselves can be studied and this limits knowledge of what the inhabitants of the indigenous communities have to offer mankind and their concept of life.

654. The report of the Office of the Ombudsman for the year 2000 indicates the main shortcomings of education in the indigenous communities to be the following: "Teacher training is insufficient; school dining rooms are lacking; there is no adaptation of the curriculum for disabled children; there are no programmes for indigenous adults; there is a lack of public bus services for schoolchildren; study hostels for children from distant communities are needed; many schools and high schools have no drinking water; there is no encouragement for the teaching of local crafts; there is a lack of scholarships (both from the Ministry of Public Education and from the municipalities themselves); the school drop-out rate is high and there is no co-ordinated inter-institutional action to prevent drug addiction and child abuse; and in general there is a serious lack of infrastructure. Likewise, conditions of access to higher education make the situation more difficult."[79]

655. In 1999, the Office of the Ombudsman received a complaint concerning the teaching of indigenous languages in the community of Quiabdo (Guaymi), which was considered as case no.8124-22-99. The conflict arose out of the parents' objection to the way the indigenous language was being taught, namely by translation rather than by direct teaching.

656. After considering the case, the Ombudsman's Office in its final report recommended that the Ministry of Public Education issue the appropriate instructions for carrying out an investigation and adopting whatever action was needed to guarantee the children their cultural identity.

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[79] Office of the Ombudsman, op.cit., p.277.

657. Another problem that arises with indigenous teachers concerns the constant technical interpretations needed with regard to the academic requirements for teachers, most of whom work as the sole teacher or as itinerants. A situation of this kind arose at the beginning of the school year 1999, when the relevant offices of the Ministry of Public Education refused to appoint a group of Ngöbe or Guaymi teachers, who in some cases had been responsibly performing their duties in the indigenous territories for five years, asserting that the indigenous teachers "did not have the prerequisite of a university degree". The organization supporting the teachers, with the backing of the Department of Indigenous Education in the Ministry of Education, succeeded in overturning the decision.

658. As has been pointed out, the revision of article 76 of the Constitution championing indigenous languages has been remarkable for its direct impact on Costa Rican education.

659. Another positive event in the field of indigenous education has been the signing of three agreements between the public universities and the Ministry of Public Education on the vocational and academic training of indigenous educators for purposes of preserving indigenous culture and ensuring employment stability for teaching staff of indigenous origin.

660. These agreements were as follows: the first Diplomate Convention, signed in 1983 by the University of Costa Rica and the Ministry of Public Education, and the diplomate conventions signed in 1990 and 1999 by the Ministry of Public Education and the National Autonomous University. At present a fourth agreement on the bachelor's degree, being negotiated again with the National Autonomous University, is in the process of formalization and execution.

iii) Education for the Afro-Costa Rican population

661. The Afro-Costa Rican population has since 1948 gradually been integrating itself into the life of the nation. The State has been making important efforts in this regard, to eliminate any discriminatory bias in all areas of society and to respect the traditions and culture of the Afro-Costa Rican population.

662. In fact it should be recognised that the principles set forth in the Declaration on Race and Racial Prejudice which was signed by our country have not yet been fully incorporated into what is taught there. The Costa Rican programme of education still does not include the contribution of the Afro-Costa Rican group to the consolidation of the country. Nor is that invaluable contribution shown in the national history taught in primary and secondary schools.[80]

663. Likewise, prejudices and stereotypes regarding the Afro-Costa Rican and indigenous population still persist today. To resolve this state of affairs, at least in law, a draft law entitled "National Day of Ethnic and Linguistic Diversity" has been introduced in the Legislative Assembly whose aim is to make the public more aware of the multi-cultural and multi-ethnic character of Costa Rica and thereby to promote real access to political, economic and social development in the country.

664. Further to resolving the situation, the Ministry of Public Education, with the support of government bodies and private enterprise, civil society and the media, has embarked on the task of restoring the fundamental moral values that underlie the way of life of Costa Rican citizens, by mass campaigns and action in centres of education emphasising the values of respect for diversity, tolerance and understanding.

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[80] Report submitted by Guillermo Vargas, Minister of Education, for the preparation of the sixteenth periodic report under the Convention on the Elimination of All Forms of Racial Discrimination.

665. Other actions undertaken by the Ministry of Education as part of a national plan of care for urban and marginalized communities, which takes account of the universal principles of the rights of the child, have included creating greater opportunities for children living in poverty to enter and stay in school, by means of the Programme to Improve the Quality of Education and Life in Priority Urban Communities (PROMECUM). Through that programme it is aimed to adapt the curriculum for this population, the better to meet its academic, social , emotional and psychomotor needs. The programme will be complemented by the provision of school meals and school voucher subsidies.

666. On the educational front, the Office of the Ombudsman, in co-ordination with the Ministry of Education, has begun a process of consultation with the different departments of that ministry for the purpose of reviewing present programmes of education and analysing whether they duly incorporate and highlight the principles of equality and non-discrimination, thereby guaranteeing the inclusion of "opportunities for general teaching about the different ethnic groups and cultures that make up the social life of Costa Rican society", to quote the words of article 8 of Act No.7711.

iv) Support from non-governmental organizations for indigenous development

667. The support offered by non-governmental organizations for the development of indigenous peoples has been crucial, especially in those areas where government action has not been really efficient.

668. Considering the indigenous communities individually, we note the following: in the communities of Guatuso and Maleku, the Irina Tsochok Foundation and the Skoki Centre for the Rights of Peoples sponsored the application for amparo brought by the community in 1996 and decided in its favour in 1999. In those same communities, FUNDECO helped with the purchase of a tractor, today the property of the Indigenous Development Association, for work in the fields.

669. In the Huetar communities of Quitirrisi and Zapaton, non-governmental organizations have a limited presence. The National Indigenous Council has supported training, helped to transport craftsmen to fairs, given logistical backing to the Indigenous Development Association, promoted the Culture Week and helped with the sewerage and water-pipe project and the purchase of bean seeds. In the Zapaton community, the Costa Rican branch of Caritas has run a programme of loans at 30% to 30 farmers, although it is said that the results have not been very good.[81]

670. In the communities of Bajo Chirripo, Chirripo Arriba and Nairi Awari, the German Technical Co-operation Agency (GTZ) has helped the municipalities with road repair throughout the region.

671. In the area of La Estrella, in the communities of Tayni and Telire, the organizations are mainly of a religious nature. There the Bethlehem Missionary Fraternity, in co-ordination with the Diocese of Limon, supports literacy and health programmes and training in dress-making. International bodies such as UNESCO have also contributed funds for the building of a school in Isla Cuén and the purchase of teaching materials, shoes and desks.

672. The Rotary Club, for its part, has contributed funds for the construction of the school in Boca Cuén; the Luxembourg Fund and Youth Challenge International have helped with the building of health posts in Calbere and Alto Cuén; the Spanish Embassy has given funds for a hostel in Gavilan for the exclusive use of indigenous people; and lastly, the World Food Programme has provided a food subsidy for those supplying manpower for infrastructure building.

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[81] World Bank, RUTA Programme, op.cit., p.57.

673. In the Talamanca area, in the communities of Talamanca Bribri and Cabecar Kekoldi, the Irina Tsochok Foundation administers the funds for the Namasol project and directs various infrastructure projects; the Talamanca Producers' Association works in the area of marketing; the ANAI Association works on projects of agricultural diversification, reforestation and environmental education; and finally, the Talamanca-Caribe Biological Corridor has undertaken several legal and biological studies with the aim of encouraging the conservation of the flora and fauna in the Carbon Line that links the indigenous territory to the coast.

674. Among the Ngobe peoples, organizations such as the Irina Tsochok Foundation, the Young Men's Christian Association (YMCA), El Producto and Coproalde Cenap have financed social activities, training and legislative and cultural undertakings. In addition the BOSCOSO Neo-Tropical Foundation in the canton of Osa has played an important role in land recovery and the building of a pedestrian bridge and a water pipe.

675. Finally, the National Indigenous Council, ARADIKES and the Irina Tsochok Foundation are active in the Buenos Aires area. The local co-operative COOPEBRUNKA for its part, drawing on loans and donations from multilateral bodies, has extended credit and loans for infrastructure, thus easing the difficulties that indigenous people have in getting loans from the national banking system.

v) Indigenous communities and the environment

676. In the area of socio-cultural development, one of the most important aims is maintaining the natural forests; this is linked to the overwhelming importance for indigenous communities of preserving the environment.

677. The legislation, with the 1977 Indigenous Act as its centrepiece, establishes the sole and exclusive right of indigenous peoples to exploit the natural resources within their territories (article 6). The use of the resources to be found in the indigenous territories is the right of their owner, that is the indigenous community, as is the enjoyment of the benefits deriving from their national use or exploitation (exploitation of forests, payment of environmental or other services); if income is generated by these means, it must be understood as being the common property of the indigenous community, to be distributed proportionately among the members of that community by a means decided on by the Indigenous Integral Development Association, whether by erecting buildings for the community or any other activity that involves collective benefit.

678. The rules for the exploitation of forestry resources in indigenous reservations were made public in Executive Decree No.27800 MINAE, which stipulates that the indigenous peoples are competent to "exercise control over the exploitation of forestry resources, by issuing permits for the removal and exploitation of trees on land without forest cover, for domestic purposes that benefit the inhabitants, which task falls to the indigenous development associations, as a means to preserve some of their most deeply rooted principles and customs".

679. In that regard the Government of Costa Rica has, through the Ministry of the Environment and Energy, allocated some 123 million colons for the conservation of 2,200 hectares of natural forest throughout the country. The money has been distributed by the transfer of 12,000 colons per hectare per year to each beneficiary over a period of five years, a commitment to the conservation of the area being required.

680. In the case of Comte Burica, in the south of the country, 1,620 hectares have had the advantage of this protection and the goal is to reach 3,000, thus benefiting about 250 indigenous persons. At the same time, projects are being sponsored like "Women at work", to make traditional clothing and crafts and create a plant nursery.

681. On the subject of prospection and mining in indigenous territories, a recent ruling by the Attorney-General's Office established that, in accordance with article 121, paragraph 14 of the Constitution and Act No.6797 of 4 October 1982, containing the Mining Code, legislative approval is a prerequisite for the granting of prospecting or mining permits in indigenous reservations, even when the application has been made by an indigenous person. The resolution is justified by the fact that "the exercise of such activity may not only change the ecological balance in the indigenous reservation but also affect its very cultural traditions. Consequently, it is for the Legislative Assembly to weigh the arguments for and against a decision of this kind, bearing in mind the different aspects involved."[62]

682. The indigenous communities require considerable help from the State, as is reported in a newspaper article of 24 July which speaks of the concern of the Guaymi indigenous community of Conte Burica, comprising about 23,000 persons, who are faced with a series of restrictions pertaining to a semi-virgin forest - protection measures that prevent them from earning a livelihood.

683. In that connection, the indigenous peoples have made it clear that "they do not want to be given everything, just the initial inputs to allow them to undertake activities in the environmental field, in agriculture or in crafts, without detriment to their surroundings".[63]

684. Another innovative idea that has been put into effect has been the system of solar panels to provide electrical energy to 15 Guaymi families in the Osa peninsula.

685. This solar panel project was financed by the Communal Energy Fund (FCE) of the project Strengthening Renewable Energy Capacity (FOCER) and cost US$ 10,000. The programme is being executed by the Central American Office of the Biomass Users' Network (BUN-CA), under the auspices of UNDP.

686. New panels like these have been added to another group of 13 houses in communities such as Río Piro, Río Oro, La Balsa, Dos Brazos de Alto Laguna, La Casona and Miramar, which for four years now have been supplied with renewable energy by this method.

687. One of the main aims of the Commenal Energy Fund is to try to link the protection of forests and the provision of electricity, using a mechanism similar to the forestry incentives.

688. The most important condition for beneficiaries to become part of this new project is that they commit themselves to protecting 25 to 50 hectares of forest for a period of five to ten years.

689. To celebrate the National Day of the Meeting of Cultures (12 October), many indigenous groups, in what is becoming a ritual each year, have held a protest march calling for better living conditions and, in particular, manifesting their opposition to the construction of the Boruca hydro-electric project and drilling for oil in Talamanca.

690. It should be made clear that the hydroelectric project in Boruca is still at the study stage and, although to date the Costa Rican Electricity Institute has only consulted the development associations of the Boruca groups, the possibility is being considered of opening up consultations to all the various groups representing indigenous communities.

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[62] Attorney-General's Office, ruling in communication no.C-065-99 of 5 April 1999.

[63] "Indigenas de sur piden ayuda" (Indigenous people in the south asking for help), La Nacion, 24 July 2000, p.18.

691. In the case of the oilfields, the Ministry of the Environment and Energy began a process of international tenders for oil exploration in the Atlantic area. The contract for the exploitation of four lots for fossil fuel exploration was adjudicated to the United States firm MKJ Xplorations Inc.

692. However, 34 groups of ecologists brought an application for amparo before the Constitutional Court, which was decided in their favour, thus annulling the search for fossil fuels in the Atlantic region. The main argument put forward by those groups was that the Ministry of the Environment had not complied with article 15 of ILO Convention No. 169, which obligates the State and the enterprises to consult indigenous groups about economic projects that might affect them.

693. This situation has led to a lively institutional debate, the executive authorities arguing that there is no indigenous community to be consulted, since the exploration will take place in the ocean. As a result, an application for clarification was made, requesting the Constitutional Court to clarify what precisely were the errors committed at the moment of soliciting tenders.

694. It must be added that, in October 2000, a further application for amparo was brought by the ecological groups concerning technical aspects of the project. That application has not yet been judged by the Constitutional Court.

vi) Respect for cultural identity

695. The principal action taken in connection with respect for cultural identity was the 27 May 1999 revision of the Constitution, already referred to, which will give greater force to the demands of the indigenous peoples for greater prestige for their languages, for them to be considered valid and for the use of interpreters to be compulsory in certain administrative procedures.

696. The Presidential Commission study that has been referred to includes the cultural perspective and, in general, recommends sponsoring programmes for a restoring traditional clothing, providing training in traditional crafts and, in particular, centres for their promotion, devising programmes of recreational activities in keeping with the culture, compiling a written indigenous history, strengthening traditional religious practices, encouraging the use of autonomous languages through education at all levels, restoring archaeological sites, running workshops on the history of the different cultures, fostering indigenous cultural interchange, building houses of culture, creating a documentation centre and promoting cultural festivals.

697. There is no obstacle to foreigners meeting together, practising their beliefs, speaking their own languages or following their own customs.

698. Although there are no specific protective measures, in practice the pressure exerted in particular by Nicaraguans has led many researchers to take up the study of the impact their cultural habits are having on Costa Ricans. Things such as the food they eat have already begun to have a strong influence on the behaviour of Costa Ricans in that regard.

699. In the cultural sphere, the Nicaraguan migrants have found places where they can keep up their socio-cultural customs in the Central Valley, La Merced Park and Central Park and the Aloha discotheque in the Los Angeles neighbourhood in San José.

vii) Implementation of customary law

700. The implementation of indigenous customary law and cultural practices still presents some difficulties in the face of national legislation. Examples of this are the following:

a) The indigenous peoples of Talamanca still have difficulties practising the secas of their rivers, a traditional way of fishing which is important for the fish supply and for certain specific cultural institutions, because of the administrative obstacles to obtaining permits from the rural police;

b) Although fishing for turtles and fish in the river Frio and its tributaries and in the Caño Negro is for the Maleku an activity of vital importance, to provide them with food as well as for certain rites and group festivals, it is under a ban established by State law, in particular because the Caño Negro is a wildlife refuge;

c) The rules of the Bribri and the Cabecar have not been respected as far as their system of matrilineal filiation and the respective nomenclature (clans with their own names) is concerned and patrilineal filiation (the filiation of the dominant society) has been imposed on them, as have surnames of Spanish origin, in contravention of the principle that national legislation must be adjusted to customary law;

d) The decisions taken by certain development associations in their autonomy to resolve internal conflicts, especially land disputes between indigenous persons, are not always respected or consulted in the courts, although they are governed by custom.

701. Some positive actions are also to be acknowledged, as can be seen from the report by the World Bank, "Profile of the indigenous peoples of Costa Rica", which describes the case of a land dispute between indigenous persons:

"The Integral Development Association of the territory of Talamanca Cabecar determined the rights of each party. However, one of them did not recognise the decision and appealed to the Agrarian Court of Limon, the case going thereafter to the Higher Agrarian Court in San José. The final verdict in the case, vote no.107 of 16 February 1994, stipulated that, in accordance with the principle of respect for customary law set forth in Convention No.169, the local proceedings should - by virtue of the status of that instrument - be considered to be fully valid, even if it conflicted with other national laws."[54]

viii) Shortcomings of the system of government services

702. As has already been said, the report of the Office of the Ombudsman for the year 2000 identifies as the principal weaknesses of public sector services the following:

703. Most of the staff of government offices are not sensitive to the specificity of the indigenous peoples and the importance of the indigenous perspective in their institution's programmes and so they deny indigenous people real and effective access to government services and, as a result, the chance of obtaining any benefit. Examples of this are the lack of bilingual staff and the city opening hours of government offices located in indigenous areas.

704. Another point made by the report is that some government actions imposed on indigenous territories are completely out of touch with reality; this means that their impact on the inhabitants is insignificant. This state of affairs is exacerbated by the lack of co-ordination between different institutions, making it difficult for them to take an over-all view when tackling local problems.

705. Furthermore, "the turnover among civil servants, including in the judiciary, hinders continuity in and the completion of medium-term programmes and means that any efforts to carry out valuable

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[54] World Bank, op.cit., p.33.

experiments in the indigenous territories depend more on 'good will' and the particular interest of individuals than on any permanent plan in each institution."[85]

706. In the view of the Ombudsman, the public administration and private civil organizations sin by an excess of theoretical proposals and analyses, without having to date produced any effective answer to the demands of the indigenous peoples.

707. On the subject of the problems of the indigenous peoples, according to the Ombudsman, "from the moment the State of Costa Rica failed to register their territories or to expropriate the non-indigenous people and omitted to take action to prevent invasions or to set up a credit system for those peoples, operated through the national banking system and government institutions, as stipulated in Acts Nos.5251 and 6172 and Executive Decree No.8487-G, it obliged the indigenous peoples to take employment caring for and cultivating the estates of non-indigenous people and some coffee plantations, where they receive salaries that take no account of labour rights such as the right to a minimum wage, to compulsory insurance and to industrial risk insurance."[86]

VI. ACCESS TO JUSTICE

A. Complaint procedures

708. Being entitled to rights and duties, foreigners in Costa Rica may have recourse to all legal remedies provided by Costa Rican law to demand the safeguarding of those rights.

709. In the first place foreigners may have recourse to the Constitutional Court by applying for the remedies of amparo and habeas corpus. In that regard, article 1 of the Act on Constitutional Jurisdiction states clearly "The purpose of the present law is to regulate constitutional jurisdiction, whose object is to guarantee the supremacy of constitutional rules and principles and of the international or community law in force in the Republic ...". One may deduce from this that since that provision is directed to the protection of constitutional rights and since the equality of nationals and foreigners is a constitutional norm, foreigners may go before the Constitutional Court to invoke the remedies concerned.

710. To give an example of this, in November 1999 the Constitutional Court received two applications for amparo brought on behalf of 15 Nicaraguans who had been expelled from the country after the courts of justice had ordered their eviction from an apartment building.

711. The tale of events goes back to 1 July 1999, when some 300 families were evicted from the place known as La Carpio Dos, in San Sebastian, south of the capital. The legal proceedings for eviction were lengthy and the Ministry of Public Security had to wait nearly 23 months before being able to execute the warrant.

712. The first application to evict had been made on 24 July 1997, the warrant being issued on 8 August following. The victims instituted a series of applications and regular proceedings in the Court of Hatillo, but with no success. Moreover, they brought before the Constitutional Court 250 applications for amparo, all of which were declared void. In April 1999, a new eviction order was issued but not carried out. In view of the situation, the owners of the building brought an application for amparo against the Ministry of Public Security, which was declared admitted and gave rise to the eviction action.

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[85] Office of the Ombudsman, op.cit., p.268.

[86] Office of the Ombudsman, communication PE-407-2000, 30 October 2000, p.18.

713. As a result of the eviction from La Carpio Dos, 15 Nicaraguan citizens were deported by the immigration authorities, in accordance with the law because they were illegal immigrants. This action led to an application for amparo before the Constitutional Court brought by the legal counsel of the Nicaraguan Embassy on 15 July 1999 and registered as case no.99-005168-0007. The appellants alleged that their applications for residence permits had been rejected while the Migrant Amnesty Act was in force and they had not been given the time allowed under the law to appeal against the administrative decision. It was argued that that action in itself represented a violation of the principle of legality and due process as enshrined in articles 11 and 39 of the Constitution.

714. The Constitutional Court, by vote no.7741-99, admitted the application for amparo, stating in its considerations that "the decisions lack grounds and therefore infringe the right to defence and to due process to the detriment [of the appellants]". As a result "the application for amparo is admitted: pursuant to the principle of prompt and speedy justice which applies also to the administration, it being incumbent on the General Directorate of Migration and Aliens to attend to the application for temporary residence made by the beneficiaries of the amparo with all due diligence, in accordance with the provisions laid down by the competent authorities for that purpose; the decisions imposing the warrant for deportation are rescinded and therefore those concerned may enter and remain in the country at least until their residence application made under the special amnesty regime is decided on and no further order is issued for their deportation, in accordance with the requirements established by the law in that regard."

715. During the period 1998-1999, the Office of the Ombudsman for its part considered 36 complaints submitted by migrants. It is not however made clear in the classification of these complaints whether they are made by men or women, since often they also go against their families. The most frequent complaints and calls for help from these persons concern:

i) The violation of their personal integrity and their freedom of transit. The complaints are basically about abuse of authority in detention, in cases of deportation and of mass refoulement; denial of the opportunity to invoke administrative or judicial remedies, with the aim of proving they are in the territory illegally; and prolonged periods in detention centres, up to three days, before their deportation.

ii) The violation of labour rights. The complaints arise out of the precarious working conditions of the migrant population, who are engaged in agriculture and construction work, in different rural areas of the country, especially on sugar-cane, citrus-fruit and melon plantations in the north and banana plantations in the Atlantic region;

iii) Unfair remuneration of female workers.

716. In its report for the year 2000, the Office of the Ombudsman says that "no complaints have been received of racial abuse or discrimination in the public sector". It considers that there are two main reasons for this.

717. First, not all those who are victims of discrimination are conscious of it or recognise it as such; or, while they recognise it, they have no information about the legal instruments that protect them or the institutional means for lodging complaints and asserting their rights.

718. Secondly, because the ethnic discrimination that occurs in the country is cultural and social, of a subtle nature and practised almost unconsciously, perhaps it does not actually translate into wrongful and open violations of the rights of individuals or peoples, although it does lead to many and varied forms of social exclusion.

719. Thirdly, this kind of cultural discrimination is also usually practised by private individuals and thus escapes the legal competence granted the Office of the Ombudsman to investigate, denounce and recommend.[87]

720. In 2000, the media reported the publication of an Internet web page encouraging discrimination and intolerance between Costa Rica and Nicaragua. Several Internet publications came to light also in circulation in Nicaragua stirring up xenophobia with regard to Costa Ricans.

721. During the period 1999-2000, the Office of the Ombudsman dealt with complaints of violations of the following human rights of migrants: the right to work and violations of labour laws (case no 8211-22-99); right to personal documentation by virtue of their status as migrants (case no 8565-22-99); right to personal integrity, and abuse of authority by the administrative police (case no 8812-22-2000); irregular procedures in the issuance of personal documents to foreigners (case no 8885-22-2000); delay in the issuance of documents in the immigration department (case no 9143-22-2000); and irregularities in the issuance of personal documents (case nos 09159-22-2000 and 9200-22-2000).

722. It is important to add that the trend is towards a decrease in the complaints made by immigrants. The report submitted by the non-governmental organization Central American Human Rights Commission (CODEHUCA) in October 1998 said that the Nicaraguans living in Costa Rica were well treated, since the violations that had occurred in the past had been corrected.

723. Among such violations was the authorities' habit of rounding up the Nicaraguans they found met together somewhere and taking them to the Nicaraguan border, without giving them a chance to fetch their belongings. As has been said, this kind of thing has not occurred again. The Ombudsman has also made some recommendations to correct some institutional irregularities that harm immigrants.

724. The records of the Constitutional Court do not show any applications for amparo at present under consideration against individuals for violence in the work place. Abuses of this sort are sporadic, committed by the police especially in the Atlantic region and the north, but they are considered to be isolated cases and, in this regard, we must stress the intensive training in human rights being given by the Police School.

725. In our country there are some non-governmental organizations such as CODEHUCA, ASTRADOMES, Women United in Health and Development (MUSADE), the Costa Rican branch of Caritas and Associated International Consultants (CAI) that offer counselling and assistance in submitting complaints and help the migrant population.

726. The Constitution entitles migrants to go before the courts of justice and claim their rights, regardless of the legality of their migrant states, because it is the protection of human dignity that takes precedence, as has been said.

727. In this context, the Constitutional Court by vote no.07660-99 of 4.12 p.m. on 6 October 1999 admitted an unconstitutionality action instituted by Mrs. V.M.H., a Cuban national, against article 9 e) of the founding Act of the Costa Rican Psychologists' Professional Association, Act No.6144 of 20 November 1977, and article 5 e) of the Rules for the Temporary Affiliation with the Costa Rican Psychologists' Professional Association of Graduates in Psychology, adopted at the session of the general assembly of the Costa Rican Psychologists' Professional Association held on 14 December 1993.

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[87] Office of the Ombudsman, Annual report on its work, 2000, p.264.

728. The action was instituted on 11 May 1999 and was based on the premise that the rules concerned violated the constitutional principle of equality before the law, specifically equality of rights and duties as between nationals and foreigners and the right to work, enshrined in articles 19, 33 and 56 of the Constitution and article 24 of the American Convention on Human Rights. The rules in dispute establish a requirement of at least three years' residence in the country for the exercise of the profession.

729. The application was admitted and the Constitutional Court in its considerations said that "it emphasised the need for any exception to or restriction on the exercise of a fundamental right affecting a foreigner to have the rank of the Constitution or the laws and for the measure to observe parameters of reasonableness and proportionality and not infringe human dignity."

730. The decision in question continues: "...[given] the principle of reasonableness as a parameter of constitutionality and by virtue of what constitutional jurisprudence indicates, it is clear that from the point of view of the Constitution it is improper to impose limitations on rights, as between nationals and foreigners, that are solely founded on their status as foreigners, conformity with the principles of reasonableness being therefore required.

731. We should stress in this connection that international organizations and the Nicaraguan authorities themselves have recognised the Costa Rican authorities' concern and efforts to improve the situation of those migrants who are in the country illegally.

732. Another example of case law that is worth considering is ruling no.05569-2000 of 9.04 a.m. on 7 July 2000, which admitted an unconstitutionality action brought by Mr. C.T.E., a Cuban national, against article 5 b) of the rules governing the teaching career, article 9 a) of the Civil Service Statute Rules, resolution AJ-069-99 of the Legal Counsel of the General Directorate of the Civil Service and ruling no.C-032-99 of the Attorney-General's Office.

733. The basis for the action was the provision in the rules in dispute that established Costa Rican nationality as a requirement for access to the statutory regime. Those rules, according to the argument for the application, infringed articles 7, 19, 33 and 48 of the Constitution and ILO Convention No.111, ratified by Costa Rica in Act No.2848.

734. In its considerations the Constitutional Court stated that "the Constitution adopts the criterion of equality of rights between nationals and foreigners and therefore a provision restricting the possibility of access to a given occupation solely on grounds of nationality is a clear contradiction of the provisions of the Constitution."

735. It continues by saying "things being so, after a careful study of the provisions of the rules in dispute, the Court cannot see any reason justifying the prior requirement of Costa Rican nationality for embarking on a teaching career. [...] The restriction imposed by such rules not only is unreasonable but also constitutes a clear violation of the law of the Constitution, since such rules only take into consideration the criterion of nationality in preventing foreigners from embarking on a teaching career, without there being any objective basis, special circumstance or any other argument justifying that restriction. The provisions in dispute introduce an unjustified discrimination that has no foundation in the law of the Constitution."[88]

736. In relation to possible acts of xenophobia that might be committed against immigrant workers, there is in Costa Rican legislation no specific law that punishes racism; however, if such an attitude is

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[88] Constitutional Court, vote no.5569-2000, action for unconstitutionality, 7 July 2000.

manifested in acts that contravene public order, those acts are penalized in accordance with the ordinary criminal legislation. Article 371 of the Criminal Code on this point states that:

> "Any person, manager or director of an official or private institution or administrator of an industrial or commercial establishment who applies any prejudicial discriminatory measure based on considerations of race, sex, age, religion, marital status, political opinion, social origin or economic situation shall be liable to 20 to 60 days' fine. In the event of a repeat offence, the judge may, in addition and as an accessory penalty, suspend a public official from his duties or post for a period of no less than 15 and no more than 60 days."

737. In relation to complaints of abuse of authority, violence, torture and/or death of migrant workers or their families as a consequence of action by the police or the immigration authorities, there have been complaints of abuse of authority, especially in the northern and Atlantic border region of the country. At present these are only isolated cases that are being looked into by the Office of the Ombudsman, which has in turn issued some recommendations to correct institutional irregularities that harm immigrants.

738. Regarding the Afro-Costa Rican population, in October 2000 the Office of the Ombudsman complained to the Office of Propaganda Control of the Ministry of Government and Police about the commercial advertising of a sponge for cleaning kitchen utensils called "La Negrita", because it considered that the advertising encouraged racial discrimination and, more particularly, stereotypes of black women in Costa Rica.

739. In its argumentation, the Office of the Ombudsman said that "both the trademark, the logo and the picture used on the product label and the advertising for the article itself had a negative impact on the national community, in that it presented a stereotyped image of women in general and of black women in particular [...]. The image used for the propaganda minimizes the role and contribution of black women in the social and cultural development of the country, creates a stereotype of them and, what is worse, stresses their present work by reproducing a power relationship of unchanging subjection and domination, which is out-of-date and derogatory."[89]

740. One point that must be highlighted, which shows the context of respect for the human rights of those who live in Costa Rica is Costa Rica's honourable absence for the second consecutive year from the reports on human rights violations in 1999 and 2000 of the non-governmental organization Amnesty International.

B. Access to justice for indigenous peoples

741. As has been repeatedly stated, no kind of restriction is imposed on inhabitants of the indigenous communities who wish to seek justice by going to court if their rights have been infringed.

742. It is only fair to recognise that much remains to be done to guarantee effective access to the courts when there still such barriers as those of language and understanding of the procedure and the penalties, particularly in cases where indigenous customary law would impose a different type of penalty such as community labour.

743. An eloquent example of how the indigenous inhabitants can go to court and seek redress equally from the State or from individuals is to be found in Constitutional Court vote no.06229-99 of 11 August 1999, which admitted an application for amparo brought by the Maleku community.

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[89] Office of the Ombudsman, communication PE-391-2000 of 10 October 2000, p.1.

744. In recounting the facts, the petition accompanying the application asked that "an area of 250 hectares and 4,103 square metres that had been cut off from the indigenous reservation be restored to it, so that the area specified in Decree No.5904-G of 11 March 1976 would not be reduced, and, consequently, that Decree No.7962-G of 15 December 1977 be declared inapplicable and that the earlier legal situation be re-established, that is, the limits set by Decree No.5904-G in 1976".

745. The Court in its argumentation concluded that:

> "It must be borne in mind that what we have here is not simply the modification of one decree by another, but the violation of an international principle of human rights which, in accordance with article 48 of the Constitution, also ranks equal with the Constitution. Given that the above-mentioned Convention urged States to recognise the right of indigenous peoples to the lands they had traditionally occupied and that, in compliance therewith, the State of Costa Rica by Decree No.5904-G and Act No.6172 recognised a given area as the territory that the Maleku Indians had traditionally occupied, that then gave effect to the right contained in the Convention, which cannot be modified by decree, since that would imply a violation of the Convention itself."

746. The decision continues as follows:

> "Things being so, articles 1 and 2 of Decree No.7962-G which refer to the indigenous reservation of Guatuso are inapplicable because they are contrary to the Constitution and to [ILO] Convention No.107, ratified by Costa Rica, and in consequence the application must be respected and the executive must begin the relevant legal procedures to give effect to the occupation by the Maleku indigenous people of the lands traditionally occupied by them ..."

747. It is important to note that the judgement stated: "The application is declared admitted. The State is condemned to pay costs and damages, which shall be settled on execution of the sentence in the case against the State.

C. Development and indigenous rights

748. One of the most controversial issues in recent months has been the project for the construction of a hydroelectric dam in the Boruca region, to the south of the country, scheduled to begin in 2003, with the dam entering into operation seven years later.

749. The chief claim of the indigenous communities regarding the construction has been that the project was developed without the endorsement of the inhabitants. Following the procedure laid down in Costa Rican law, in August 2000 the Joint Commission of the Costa Rican Electricity Institute heard the claims of the representatives of the indigenous communities stating that the project would do harm to five nearby communities and completely flood the territory of Rey Curré.

750. By vote no.8019-00, the Constitutional Court admitted an application for amparo brought by the communities concerned against oil exploration concessions granted in 1998 in the Atlantic area. In the application against the exploration, various ecological organizations alleged that there had been no consultation with the people in the communities "affected" by the exploration, which was organized into four lots, two on the sea-bed and two on land over an area of 107 square metres.

751. The consequences of that decision are important because it has made it clear not only that economic considerations should be subordinated to human rights but also that failure to consult with the indigenous peoples about activities that affect them, in accordance with ILO Convention No.169, causes permits and authorizations to be annulled.

D. Factors impeding full integration

752. On the basis of the principle contained in article 19 of the Constitution already referred to, Costa Rican legislation forbids unequal treatment of nationals and immigrants. However, differentiation between Costa Ricans and Nicaraguans has arisen out of many factors linked to their cultural interaction, as has been amply explained.

VII. PUBLIC ACTIVITIES

A. Miscellaneous considerations

753. For years Costa Rica, like the other Latin American nations, celebrated 12 October as Our Race Day, as a symbol for many years of the contribution, the grandeur and the glory of Spain on its arrival in the New World. However, in 1994 Costa Rica promulgated the Day of Cultures Act.

754. The proclamation of the Day of Cultures gave new significance to the anniversary. That significance is now one of tolerance, of the ethnic diversity prevailing in America and, without forgetting the legacy of the Spanish, it highlights the contribution mainly of the indigenous and black groups to the formation of our national identity.

755. When the Day of Cultures was adopted, it was made clear that Costa Rica's roots, like those of the other Latin American nations, had a threefold origin and since 1492 had been intertwined. They are Spanish, indigenous and black and together make up a multi-ethnic and multi-cultural nation. The institution of this celebration has also served as recognition of the contribution to our economic and social development made by other groups such as the Asians, the Jews and the Arabs.

756. The Ministry of Culture, Youth and Sports has over the past year taken a great part in activities involving indigenous groups. Among the chief of these we should mention the following: its participation in the consultation held by the National Institute of Statistics and the Census on the incorporation of the ethno-linguistic variable into the national population census and the indigenous document in June 2000.

757. The Ministry is a member of the Central Technical Committee and the Regional Technical Committee for the elaboration of a Pilot Plan for the Development of the Indigenous Peoples that involves holding workshops for its validation and negotiation. The Ministry of Culture also takes part in spreading knowledge of the traditional indigenous cultures through research and the publication of books in the series "Popular cultures: our oral knowledge and our world view". Two other works "Our crafts" and "Our cuisine" are also being published.

758. Other activities have been the Térraba-Teribe cultural interchange aimed at strengthening that people's identity and infusing energy into its heritage and cultural traditions in Costa Rica and Panama; a workshop to publicize Convention No.169 in co-ordination with the ILO and the National Indigenous Council; research into crafts using gourds and weaving; patronage of the "Meeting of religions" held on 1 January 2000; patronage of the national meeting of indigenous peoples planned for October 2001; and the loan of premises to indigenous groups for cultural promotion activities.

759. For its part, the Ministry of Public Education has through training activities and community meetings spread knowledge of the rights and duties of the indigenous inhabitants; for that purpose workshops are held, advice is given to teachers and there is practical work done with pupils in classrooms

and meetings and talks in the community. Different types of materials are used, such as printed matter and audio-visual aids, the methodology is participatory and there is an annual candle-lighting ceremony.

760. For this work the Ministry of Public Education's Department of Indigenous Education has specialists to provide training: a linguist, an expert on environmental education, two teaching professionals, a sociologist and a human resources officer.

761. As a means of encouraging Afro-Costa Rican culture, the Ministry of Culture sponsored the radio magazine Diaspora, produced by the non-governmental organization Caribbean Project Cultural Association; unfortunately, economic limitations have forced the temporary suspension of this project. The Ministry also works jointly with the Limon Civic and Cultural Committee on the annual celebration of the "Day of Black People and Afro-Costa Rican Culture" and on the "Flowers of the African Diaspora" festival.

762. In the field of the promotion of rights, the Office of the Ombudsman, as the proper institution for the safeguard of fundamental rights and the body responsible for protecting the rights and interests of the inhabitants, has co-ordinated follow-up on compliance with Act No.7711 concerning the elimination of racial discrimination in programmes of education and in the media, as has already been mentioned.

763. To that end, the Office of the Ombudsman, as part of its own project for the promotion of rights, sponsored by the Government of Finland, held a workshop on 1 April 2000 "to consult with young blacks about the draft general law on youth, which turned out to be highly useful".[90]

B. Permanent Forum on the Migrant Population

764. The Permanent Forum for the Migrant Population, created in 1995, has come to be an important area of interchange between the Government and civil society, where public institutions, non-governmental organizations, research centres and bodies and agencies concerned with international co-operation on migration can interact.

765. The Forum has taken as its general goal "to promote the adoption and implementation of integral and integrating policies to deal with migrant flows that will guarantee the rights and the quality of life of the migrant population in our national territory".[91]

766. The Forum is felt to be one of the most important places where initiatives for tackling the problems of migrant populations in the country can be devised. Its creation is considered as one of the clearest responses to the concern and interest of society nationally and internationally regarding migrants, in view of the growth of the phenomenon and its domestic implications.

767. The Forum is organized into four commissions (labour issues, social issues, legal issues, and publicity and information), which hold conferences, workshops and forums, make visits to the different regions where the migrant population is most concentrated, issue publications and analyse legislative drafts on the subject.

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[90] Office of the Ombudsman, Annual report on its work, 2000, p.262.

[91] Document of the Permanent Forum on the Migrant Population.

C. Cultural radio stations in the indigenous communities

768. In 1973 the Costa Rican Institute of Teaching by Radio (ICER) began its work, with the backing of an agreement on cultural co-operation signed by the Governments of Liechtenstein and Costa Rica and ratified by the Costa Rican Legislative Assembly in Acts Nos.6606 and 7922 of that year.

769. The fundamental aim of ICER is to offer rural communities a system of distance learning by using the radio, written materials and personal or tutorial assistance (the ECCA system). For this certain goals were set: to facilitate communication with Costa Ricans living far from the centres of population and foster their values, customs and traditions; to strengthen Costa Rican values, as well as those that are universally valid, and to support persons outside the mainstream of culture to enable them to enhance their intellectual, social and human capacity in their own environment, by developing and preserving their many independent values as part of their contribution to our country's cultural heritage.[92]

770. The project of setting up small cultural radio stations has been a valuable contribution to the spread of democracy and the use of the media, especially through its penetration into the areas most remote from the main population centres. This initiative has provided the opportunity for broadcasting programmes such as "A teacher in your home", "School for everyone" and "On the paths of faith" and many others in the educational and cultural field.

771. The broadcasts of these small radio stations are indispensable to the communities where they are located, because they have become a means of intercommunication for the rural or indigenous community wherever it may be.

772. Each of the radio stations finances its own operations, covering its own costs, particularly the daily ones such as salaries, electricity, water and other basic services. The rest of their resources come from external sources or from parallel activities organized by the radio station, such as fund-raisings, bingos and raffles.

773. At present there are five small radio stations in operation covering the indigenous territories. The first was the Voice of Talamanca which was set up in 1979 in the community of Amubri and broadcasts from Monday to Sunday between 4 p.m. and 7 p.m. This station provides coverage for the canton of Talamanca in the province of Limon, which extends over an area of 2,809.93 square kilometres and has a population of 11,013 inhabitants.

774. The Maleku cultural radio station is called the Maleki-Georg von Gaupp Berghausen Cultural Radio System and uses the 1580 KHz frequency; it began operating on 28 September 1985 and broadcasts every day from 4.30 a.m. to 6.30 p.m. from the Tonjibe locality in San Rafael de Guatuso, Alajuela. This station covers the Guatuso region, an area of 743.82 square kilometres with a population of 6,774, not all of whom are indigenous.

775. The Boruca radio station is called Boruca Cultural Radio. It uses the 101.5 MHz frequency. It began operations on 24 September 1982 and its broadcasting times are Monday to Sunday, 5 p.m. to 8 p.m. It broadcasts from Boruca in the canton of Buenos Aires, province of Puntarenas. It covers a region that includes the indigenous territory of Boruca.

776. The Buenos Aires radio station, which is also called Boruca Cultural Radio, broadcasts over the 1600 KHz frequency, began operations on 18 September 1982 and is on the air daily from 5 a.m. to

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[92] General information from the Costa Rican Institute for Teaching by Radio, p.2.

7 p.m. This small radio station provides coverage for the indigenous peoples of Salitre and Ujarras, located in that area.

777. Lastly there is the Corredores radio station, known as Corredores Cultural Radio, which broadcasts over 1580 KHz, began operations on 8 February 1985 and is on the air daily from 7 a.m. to 7 p.m.

778. In October and November 2000 a conflict arose between the Boruca and Telire radio stations and the Costa Rica National Radio, because they were broadcasting over the same frequency. After much negotiation an agreement was reached whereby the two indigenous radio stations would continue on the same frequency and National Radio, the State radio station, would be allocated another frequency for broadcasting in the region.

D. Second "Flowers of the African Diaspora" Festival

779. From 18 August to 3 September 2000, the second "Flowers of the African Diaspora" Festival took place in Costa Rica. Its aim is to revitalize the country's historical and cultural wealth at the time of the celebration of the Day of Black People and Afro-Costa Rican Culture (31 August) and thus contribute to strengthening Costa Rican identity through acceptance of its Africanness as an undeniable part of our people's ethnic and cultural inheritance.

780. Various Afro-Costa Rican organizations, government and private entities and individuals concerned to support and encourage the values of Afro-Costa Rican culture contributed to this event.

781. The reasons adduced for holding it were that "the Afro-Costa Rican community is one of the most important ethnic groups in this country and there are no public policies for the recognition of its contributions or for assistance with its development; there are a large number of Afro-Costa Rican organizations involved in specific activities that need to strengthen their impact by a strategically co-ordinated effort; lastly, the Costa Rican people is ignorant of its own history and ethnicity and, in order to achieve a more authentic cultural identity, needs to rediscover its roots and restore what has been forgotten."[93]

782. The general aim of the festival is to promote the development of the Afro-Costa Rican community by making known and exalting the values of black culture and highlighting its contributions to Costa Rican society. Its specific goals are to rescue the values of Afro-Costa Rican culture; to publicize and promote the achievements of that culture; to consolidate the identity of young Afro-Costa Ricans; to make the Costa Rican public in general aware of the historical and contemporary values of the Afro culture and its influence on the cultural heritage of the country; to contribute to building Costa Rican identity; and to develop tourism in the Caribbean region of Costa Rica.

783. The second Festival included a seminar entitled "African influence on Costa Rican culture"; in addition there were exhibitions of painting and sculpture, food-tastings and festivals of music.

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[93] "Flowers of the African Diaspora" Festival, p.2.

VIII. ACCEPTANCE OF THE AMENDMENT TO THE CONVENTION

784. By communication DGPE-SPM-DHR 2412-10-99 of 21 October 1999, signed by the Minister of Foreign Affairs, Roberto Rojas, the Government of Costa Rica informed the United Nations Secretary General that "Costa Rica had great pleasure in supporting the amendment to article 8 of this instrument, adopted by the Fourteenth Meeting of States Parties to the Convention in January 1992 and ratified by the United Nations General Assembly at its forty-seventh session in resolution 47/111 of 16 December 1992".
